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Floor Debate
February 18, 2009

[LB5 LB23 LB53 LB150 LB219A LB250 LB290 LB540 LB547 LB611 LB669A LR11
LR24 LR25 LR27 LR28]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-eighth day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Kenneth Leischner from the First Christian Church in Falls City, Nebraska, Senator Heidemann's district. Please rise.

PASTOR LEISCHNER: (Prayer offered.)

SPEAKER FLOOD: Thank you. I call the twenty-eighth day of the One Hundred First Legislature, First Session, to order. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER FLOOD: Are there messages, reports, or announcements?

CLERK: Your Committee on Health and Human Services. Your Committee on Health and Human Services reports LB250 to General File with amendments; LB290 General File with amendments; LB540 General File with amendments; LB150, LB611 indefinitely postponed. That's all that I have, Mr. President. (Legislative Journal pages 473-475.) [LB250 LB290 LB540 LB150 LB611]

SPEAKER FLOOD: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. We begin with LB5. [LB5]

CLERK: LB5 discussed yesterday. Enrollment and Review amendments were considered. When the Legislature left the issue, pending was an amendment from Senator Lathrop. I do have a priority motion, Mr. President. Senator Stuthman would move to bracket the bill until May 29, 2009. [LB5]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Stuthman, you're recognized to open on your bracket motion. [LB5]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. As we

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have debated this bill, you know, for several hours and in my opinion and I will tell you that, you know, I'm willing to spend more time on it at the present time. But in respect to other people's bills on the agenda, I think we should, hopefully, try to get this issue, you know, taken care of in a short period of time this morning. But it is my intent, you know, to bracket this motion until May 29 and then it could be taken up at that time, if the time is allotted. I want to talk a little bit about some of the issues that was discussed yesterday on the floor, and the fact that people haven't been hearing from their constituents. Well, I did hear from one of my...it wasn't one of my constituents, but it was from an individual that I did go to school with. You know, that was several years ago, high school. And I will tell you this individual and I will read the e-mail that he sent me. He said, "Saw you on NTV debating the trapping in roadside ditches. Hang in there. I'm against it on the grounds that I almost lost a pet dog in one of these traps. The trap was for coyotes and she, my dog, was a mere toy rat terrier. The trap was too big and caught her in the throat." So this is a situation where people are watching and they are concerned about their pets. We're not getting just e-mails from people that are, that are, you know, not from the members of the...not from state, not from our state and not our constituents. But I think the fact is, people are very concerned about what can happen in a public, and I will state that again, a public place. It's a county road right-of-way that can be used by the public and public does use these right-of-ways. Also, things that were mentioned was the fact that, you know, trapping season is like December, November, December, January, and February. Well, I know for a fact in my area where we have housing developments, you know, starting up, 40 acres are purchased and they develop it, and four or five, six, seven, eight, nine, ten homes are built in that area. And I respect those people for building out in the community. But during the winter months when there are nice days, a lot of these individuals like to go and walk around the section, take their pets along with them. And they do not want to have to be concerned about that their animal is going to be caught in a trap, their leg is going to get broken, and the fact that they would like to be able to not have to be worried about a trap being set off on their foot, over the head of their pet or be caught in a trap by the foot of their pet. Another thing that I also want to talk about is, there's been issues brought up on this that we would like to have local control. The people, the county, you know, should have the local control. And I respect that. I respect that local control, but I think as far as we here in the body, I think we should be consistent. We had a smoking ban, which did not allow any local jurisdiction, city council, community, village or anything to opt out of that smoking ban. It was straight across the board. It was a level playing field. It was not a piecemeal bill that was passed. We have another one and this is going to be addressed this year. It's a concealed carry. We have...people can have concealed carry. But we have some communities in the state that do not allow concealed carry. I think this is an issue that needs to be addressed so that individuals that do have a permit to carry a concealed weapon, that they don't have to be concerned that the minute they're driving through a community that they have to take their concealed carry out and not have it, you know, with them. They have to show it in their vehicle. They have to leave it in their vehicle while they're shopping in that local

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community that does not allow the concealed carry. I think those are issues that we need to be very consistent about, the fact that we want to have it straight across the board. What we have presently in this bill that really does concern me, it's a piecemeal. Currently, we have no trapping in county road right-of-ways. That is what is in the statute right now. But what the bill that is before us would repeal that all, except, you know, the fact that counties could or portions of counties could allow trapping or not allow trapping in their county, with no signage of anything as to where trapping would be allowed and where trapping wouldn't be allowed. So those are the issues that I have a real concern with. The fact that, you know, there's still going to be the traps, there's not going to be a designated area where there's going to be traps. So I think we should go back to the bill that we put in place two years ago and not allow trapping in public road right-of-ways. So with that, I'm asking for your support to bracket this motion until 5-29 of '09 and I would ask you to support this. Thank you, Mr. President. [LB5]

SPEAKER FLOOD: Thank you, Senator Stuthman. Members, you've heard the opening on Senator Stuthman's bracket motion. We now turn to discussion on the bracket motion. Senators Haar, Lautenbaugh, Friend, Lathrop, and Sullivan. Senator Haar, you are recognized. [LB5]

SENATOR HAAR: Yes, Mr. President, members of the body, thank you. Senator...question for Senator Carlson. [LB5]

SPEAKER FLOOD: Senator Carlson, will you take a question from Senator Haar? [LB5]

SENATOR HAAR: Well, I'm sorry. I meant Christensen. I'm sorry, Christensen. (Laugh) [LB5]

SPEAKER FLOOD: Strike that. Senator Christensen, will you take a question from Senator Haar? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR HAAR: Did you get the trapping traps set up so people could see them? A number of people, including Senator Pirsch yesterday, had asked to see the traps. Has that been set up, do you know? [LB5]

SENATOR CHRISTENSEN: Yes. They have been set up. [LB5]

SENATOR HAAR: Okay. So if anyone would like to see the legal traps, they are available in the Rotunda with a Parks and Rec person who will put his hand in the trap, right? (Laugh) [LB5]

SENATOR CHRISTENSEN: Correct. He will. I had mine in today. It snapped on my

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hand when I was setting it. It's in good shape. [LB5]

SENATOR HAAR: Okay. So for those of you who would like to see it, it's out in the Rotunda. Again, I bring up the question of safety. And I received about 11 e-mails from my constituents and they are carbon copies of each other. And then I received one from Senator Dierks' area and he gave me permission to read this. "Dear Senators: The Knox County Board of Supervisors and the Knox County Sheriff are hereby expressing their opposition to the passage of LB5. Trapping in the county road right-of-way could create a danger to law enforcement and emergency responders. If there are traps in the right-of-way when these people have to respond to a traffic accident that's in the ditch, the law enforcement and emergency responders could step into a trap they had no idea was there. This could be a danger to utility personnel if they're walking in the ditches, and so on. County employees often are in the road right-of-way when working, so traps will pose a hazard. There are other places to trap and it should not be done in the road right-of-way. Thank you for your consideration." And this is signed by the Knox County Sheriff and also by the Knox County Board of Supervisors. Again, I would ask you to consider the danger to children as you look at these traps in the Rotunda. Thank you. [LB5]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Lautenbaugh, you are recognized. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do have a suggestion for the Knox County Board of Supervisors. They, under this bill, when it's passed, can simply ban trapping in their county and it really won't be a concern. But how to address the concerns that some of you are receiving that I don't seem to get. The coyote trap that Senator Stuthman's classmate almost lost a dog to, somewhere, sometime, is not the kind of trap that we're talking about. That would be helpful to let your constituents know. Senator Haar, if you're hearing from people who say they're worried about their children and their workers, urge them to contact Game and Parks. And have Game and Parks tell them that the very traps we're allowing have no history of hurting anyone. That might do something to allay people's concerns, if you're truly hearing them. People are reacting to the specter that some of us are raising of these giant cartoon bear traps in the ditches snapping people's legs off. And that is not what we're talking about here. And every time we stand up and say, won't someone think about the children and won't someone think about the pets, and won't someone think about the road workers, I'm going to jump back up and say, won't someone think about the evidence, won't someone think about the history, won't someone think about what we're actually talking about here. And I'm sorry this is taking time, but we all voted to advance this bill for a reason. And it was because I think it is the right thing to do and a good majority of us did, too. And now here we are with another bracket motion. Consider the evidence that's developed since General File. Senator Stuthman has a classmate who almost lost a dog to a trap that is not one of these that would be in the

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right-of-way. A state trooper or that's not correct, a deputy heard about a deputy friend and wrote to an antifur activist about this kind of thing. Where is the evidence that these things actually constitute a danger? This is being trumped up, and I pointed out yesterday who's trumping it up. These are antifur activists who don't want any kind of trapping. It's being distorted, it's being misrepresented, and there's plenty of fear mongering going on. And every time that happens, I'm going to be standing here at this microphone saying, take a breath, and I probably need to, too, because I seem kind of worked up about this, take a breath, and look at the evidence. Consider why we don't have any real stories of people being hurt in the 70 years we allowed these traps in those ditches. Why don't we have that? I would submit to you because it doesn't exist. This is not a real threat. This really isn't even about this particular bill anymore. This has gone way beyond that, and now we are where we are. And we're taking a lot of time on this. And I promise you, I will take the time it needs to continue to defend this bill. And I ask you to bear with me. I ask you to remember why you advanced it. I ask you to not be distracted by the, I won't call them facts, the allegations that are swirling around this and focus on what we know. And please vote no on this motion to bracket. [LB5]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. (Doctor of the day and visitors introduced.) Continuing with discussion on Senator Stuthman's bracket motion, Senator Friend, you are recognized. [LB5]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I listened pretty intently yesterday, actually had some meetings, and I appreciate the debate. I don't have any problem with it. I do have a problem here now though, members of the Legislature, I do. Sun Tzu was a warrior philosopher. We've all probably heard of the guy, 2,000 years ago. And in one of the chapters, in adaptations, I mean, Sun Tzu was a warrior who always believed that winning a war was fought or was accomplished without even really fighting. He also pointed out there are five dangerous traits in generals, in people that are trying to lead. There are those who are ready to die and they can be killed really easy. And there are those who are intent on living and they can be captured quite easily. There are those who are quick to anger and they can be shamed. There are those who are puritanical and they can be disgraced. There are those who love people and they can be troubled. There's a point to that. It's an amazing book, by the way. If you ever get a chance to look at it, do. We had a bracket motion on General File. This is very uncreative. Okay. It was a 27 to 18 vote, the bracket motion. I'm not picking on Senator Stuthman, but it might feel like that when I get done here. Okay. That's not my intent. Is this really a filibuster? Is it? Come on. Enough of us have been around long enough to see a real filibuster. This ain't it. We've seen the best. A lot of us have seen the best filibuster. This isn't it. This is so uncreative it's not even funny. It isn't. It's not even humorous anymore. We had a 27 to 18 vote on a bracket motion. I don't want this bill to pass, but this isn't a filibuster, folks. That's not what's happening here. This is an example or this is exactly why we need to...we get a list from the, we get a...I don't want to sound preachy here, but I'm going to. We get a list from the

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Speaker's office every day and it tells us what's going to be on the agenda. We knew LB5 was going to be there. It would have been very easy to take LB5, dice it up section by section, if you really, really, really, truly hate the bill and you want a real filibuster, amend every section. Put ten amendments up on it. We had plenty of time between now and Select File, too. Look, here's where we sit right now. We've got another bracket motion to kill a...I explained to you from the very beginning that this bill should not pass. This bill doesn't make any sense. It makes absolutely...it didn't make any sense what we did two years ago. It doesn't make any sense now. If somebody is too lazy to take traps and walk out into a field 400 yards, that's their problem. This bill is stupid. It's as simple as that. I said that on General File. I say it now. But do you know what's even dumber? The fact that we're revisiting the issue with a bracket motion. Look, if you want 33 votes to pass this bill,... [LB5]

SPEAKER FLOOD: One minute. [LB5]

SENATOR FRIEND: ...toss five or six amendments up and do the math, start adding. I don't care if the bill passes or not. I think it's dumb. I'm going to vote no. But here's where we're at now. I would ask you one more time to vote against this bill. Vote against it. If you want to filibuster it, filibuster it. Do it right. But this isn't right. I mean, this is, this is sheer folly. And the fact of the matter is, the reason I read Sun Tzu from the very beginning is there's no strategy. There's no planning. There's nothing wrapped around this. It's like, I'm coming in this morning at 9:00 and I feel like monkeying with the works. Well, let me tell you something, the master, and I'm not talking about Sun Tzu, I'm talking about the guy who's not here anymore who he'd be laughing until the cows came home. Laughing at this folly. [LB5]

SPEAKER FLOOD: Time, Senator. [LB5]

SENATOR FRIEND: Thank you, Mr. President. [LB5]

SPEAKER FLOOD: Thank you, Senator Friend. Senator Lathrop, you are recognized. [LB5]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I always appreciate Senator Friend, and (laugh) sometimes I just always want to respond immediately to what he has to say, which wasn't the point I wanted to make when I stood up this morning. Sometimes when you try lawsuits and you leave the courthouse and you had logic on your side and you had the facts on your side and you lose, lawyers will stand out on the sidewalk or in the Rotunda and say, yeah, it was one of those cases where the judge sat down and he said, I already know what I want to do, don't confuse me with the facts. A kind of a cynical response to losing but sometimes it feels like that's going on in this place. Sometimes we come to the floor where we're supposed to make policy, where we're supposed to have the input from other people's ideas, where we mix it up

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and we test bills with logic and reason and other people's arguments, and then, then we make a decision. But sometimes, understandably, people talk to us about the bill before we get here. And they say, hey, listen, this is my bill, it's important to me, will you vote for it? The purpose in standing up now is to talk to you about that moment. That moment when somebody comes by your office and says, hey, this is my bill, you know, and I, you know, I help you and you help me, and I need you on the fur trapping bill. Listen, the most you owe anybody that comes around and talks to you before the time you push the light in this Chamber is, I'll listen, I'll pay attention, I'm leaning your way. But when you make a commitment to a bill before you listen to the argument, before you listen to the logic, you're not doing anybody a service. All you've done is walked in here, ignored logic, you've ignored facts, and now you're going to follow somebody who has an idea. It may be a good idea. It may be a bad idea. But I can tell you, it feels like that's at work here. And the problem that we're having with this bill is, Senator Christensen went around and got a bunch of commitments from you. He talked to a bunch of you before the session started or last week or three weeks ago and you said, I'm with you. Now, he's standing back there, not interested in amendments, not interested in improvements, he has his vote card, and so he's done talking to people about it. And he's just waiting until these motions are done and everybody comes through like they promised. I can tell you that after you hear reason, after you hear facts, after you hear logic, and after you hear arguments on the floor, it's between you and your conscience and the people you represent. This isn't about a commitment previously made to Senator Christensen. This is about whether this is a good idea or a bad idea. This bracket motion, contrary to what Senator Friend said, I've talked to Senator Stuthman, we agreed to put it up this morning to get this behind us. We don't need to go on a filibuster. I don't intend to filibuster this. Either you're going to listen to logic and reason or you're going to follow in a commitment you made sometime ago to give this bill the green light. We don't need to argue until lunchtime or talk about the circumstances any longer. What I will tell you though is, this is intended. And frankly, if you were worried about this being a PETA coup, if I can use that word... [LB5]

SPEAKER FLOOD: One minute. [LB5]

SENATOR LATHROP: ...as Senator Lautenbaugh seems to suggest that this is the antifur trappers throwing amendments up, get rid of the bill by voting for the bracket and we're done with it. And PETA has lost its instrument for change in Nebraska if that's, in fact, what it was. If this fails, we'll be back to talking about strict liability in the ditches for those people who benefit from trapping and hurt people who are in the ditches for a lawful reason, picking up paper, picking up scrap, picking up pop cans, picking up aluminum to recycle. People have a lot of different reasons to be in those ditches and we have no reason to give the trappers a paramount interest in those ditches to the detriment of everyone else. I would ask you to vote for the bracket. Thank you. [LB5]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Sullivan, you are recognized.

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[LB5]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. With all due respect to Senator Stuthman, I do rise in opposition to bracketing this bill. I believe that Nebraskans would be, for the majority of them, would be better served by advancing LB5 in its original state. I will say that I was in Burwell, Nebraska, on Monday, talking to a senior high government class. And first of all, they were brilliant young students. They asked a whole variety of questions. Talked to them from 1:30 to 3:15 and we had a great conversation, and we did spend some time talking about this particular bill. So yesterday, I received an e-mail from their instructor and she did tell me they tuned into and watched the debate and their comments were that they thought it was interesting and sometimes silly. But be that as it may, they were all so impressed with Senator Christensen and they would now like him to come talk to the class as well. And you should know that at the end of the conversation with LB5 in this class, I did ask them to take a vote and they voted, all voted in favor of the legislation. Thank you. [LB5]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Pankonin, you're recognized. [LB5]

SENATOR PANKONIN: Thank you, Mr. President. I'm going to vote for this bracket motion and I'm opposed to the bill. I'm going to talk about it a little more this morning. I got to thinking about this last night. I drive home part of the way on Church Road. It's a paved county road in Cass County. And last week when the weather was nice and I did get home one of the evenings before it was dark, there was a lady out in that county road right-of-way with her plastic sack picking up trash and that sort of thing. And I thought about that last night. Why should she have to worry about this issue when she's doing that good public service? I represent part of three counties. I think Sarpy and Cass County would opt out of this measure and I think that's a good idea because of the number of acreages they have. But I'm a little concerned about Otoe County. I have Nebraska City, that area, but I don't have the outside of Nebraska City where there's a lot of acreages, golf course, developments. That's in Senator Heidemann's district. Likewise, the Eagle, Nebraska, area is in Senator Heidemann's district but there's a lot of acreages in Otoe County. So what if that Otoe County board doesn't take the opt out action because they have a lot of rural areas that they may be conflicted on this measure? And I think that concerns me because the people I think that are liable to have problems with this are folks that have acreages, live in developments, they're out walking their family pet dog, have children that may be playing in the county right-of-ways. And, you know, we probably understand that people aren't going to get killed or maybe even maimed, but I don't think it's a good experience for anyone to get caught in a trap. I don't think it would be something that we'd all say, boy, that's fun. Even if doesn't hurt you, harm you seriously, especially a child, it wouldn't be a pleasant experience. But I want to tell you this. If the family pet dog gets hurt or some child does have a bad experience, I don't want my name that I voted for this bill because I think, if

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you think about it, most of you have municipalities that have acreages and developments out in the countryside and these folks might not know that that neighbor has traps in his area or lets people do that and it gets into the county road right-of-way, and I just think this is poor policy. I'm voting for the bracket against the bill, but I do think we need to get this behind us. I just want everybody to think about it. If you have those type of areas in your district, I think you're at risk to move this measure on and then have someone have a bad experience. Maybe they don't get hurt seriously, but they're not probably going to be real happy and they may look back and say, who voted for this thing? Thank you. [LB5]

SPEAKER FLOOD: Thank you, Senator Pankonin. Senator Haar, you are recognized. [LB5]

SENATOR HAAR: Mr. President, members of the body, thank you. I hope some of you have tried the traps out and it's my understanding that the Parks guy would rather not put his hand in the second trap. And I tried to unload that trap with my hands and you can't. I'm not strong enough. I couldn't open it by just pushing on it with both of my hands, so if a kid got caught in it I think he'd be in big trouble. Again, I don't really think this has much to do with people who are going to invade the state and, you know, put their hands in traps so that they can prove the point. This is about Nebraskans. And I haven't been able to do this yet but I will keep working on this whether it gets bracketed or not, but there are a number of orthopedic hospitals in Omaha, and I really intend to, again, for me it's a question of safety for children. And I'm a trained scientist and I still want some evidence. I think that at least one of those traps could seriously damage a child and I will continue the pursuit to talk to orthopedic surgeons and so on. That's my concern. It's concern for children. It's not a concern for trapping. I did trapping when I was a kid. I enjoyed the walk. We had traps a couple miles out of town. We'd go there every night. We'd walk out. We even caught a rabbit once. And I'm not against trapping. I think it doesn't belong in the ditches. And I would raise another issue just briefly. Senator Carlson talked about freedom and I think that's a really important issue. But there's also something called freedom from fear. And I think public places should have the freedom from fear. People should be allowed to go to public places like parks and trails and even public right-of-way, which are ditches, and not have to fear anything. And just for my own self, next time my wife wants to go out and collect wild plums from the ditch, which we do, there's going to be a fear involved and I don't know if we'll do that anymore. Thank you very much. [LB5]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Carlson, you are recognized. [LB5]

SENATOR CARLSON: Mr. President and members of the Legislature, Senator Haar referred to my discussion about freedom and freedom from fear. And this may not be a good example, but I'll give it anyway. We have a lot of things that can bring with it an

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element of fear. And I think some of this parallels to trapping. There's a right way to fish and there's a wrong way to fish, and that can involve some danger if we're not careful. There's a right way to hunt and handle guns and there's a wrong way, and handled the wrong way, it certainly brings fear to a lot of people. There's a right way to hunt with a bow and arrow and there's a wrong way, and that can instill fear in people when it's not handled correctly. There's a right way to trap and there's a wrong way to trap, but freedom is still important. I make that statement just in response to what Senator Haar said, but I'd like to engage a little conversation with Senator Friend, if he would yield. [LB5]

SPEAKER FLOOD: Senator Friend, will you yield to a question from Senator Carlson? [LB5]

SENATOR FRIEND: Yes. [LB5]

SENATOR CARLSON: Senator Friend, in your testimony, you described what we did two years ago. Describe that again. What did you call that? [LB5]

SENATOR FRIEND: Well, first of all, it wasn't testimony. I was making floor comments. There is a difference, but I can describe it again. Yeah, two years ago you could trap in roadways, the way I understand it, county roadways. Correct or incorrect? [LB5]

SENATOR CARLSON: Well, that's correct. But I think you referred to our action of two years ago as being stupid. [LB5]

SENATOR FRIEND: No, I did not. I said this bill is stupid. And it might...well, actually you may be right. I might have said that action itself was stupid as well. This whole thing is stupid. [LB5]

SENATOR CARLSON: I think that is the way you referred to it and I guess I'd refer to it...well, I would agree with you what we did two years ago was not the right thing to do. Now, would you call what we did two years ago a mistake? [LB5]

SENATOR FRIEND: No, not necessarily. [LB5]

SENATOR CARLSON: But it was a bad thing? [LB5]

SENATOR FRIEND: I think it was...I think this whole thing has been stupid and I think that discussion was stupid as well. [LB5]

SENATOR CARLSON: Two years ago. [LB5]

SENATOR FRIEND: Yes. [LB5]

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SENATOR CARLSON: So if something is a mistake or something is stupid, what do we do about it? [LB5]

SENATOR FRIEND: Well, stupid is different than a mistake. I've done stupid things. It doesn't mean that it's totally wrong or that it was a mistake. [LB5]

SENATOR CARLSON: Okay. [LB5]

SENATOR FRIEND: But what we do about it, is what we as a body decide we want to do about it. [LB5]

SENATOR CARLSON: I agree with that. Now, you also commented that what we're doing right now is stupid. [LB5]

SENATOR FRIEND: I think the strategy in the process here is stupid, yeah. Thank you for allowing me to elaborate because I was kind of on a roll there earlier. [LB5]

SENATOR CARLSON: Okay. Well, I'm going to go back to what we did two years ago I don't think was the right thing. I think it was a knee-jerk reaction. And because of what we did two years ago, we're standing here talking today and you're not agreeing with this process and the way we're going about it and I may even agree with you. But I think what we did two years ago was a mistake and if we make a mistake, let's correct the mistake. Correcting the mistake by passing LB5, with the Campbell and Wightman amendments on it, restores counties to doing what they want to do, and I don't see anything wrong with that. I think that's the right way to go and so I'm against this bracket, but thank you, Senator Friend. [LB5]

SENATOR FRIEND: You're welcome. [LB5]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Nelson, you are recognized. [LB5]

SENATOR NELSON: Thank you, Mr. President, members of the body. I stand in opposition to the bracket motion. I'll be brief. Senator Christensen never came around and talked to me. Actually, he wouldn't have had to because I agree with Senator Carlson, I think this was a mistake from the git-go two years ago. I think it was bad policy at that time. We didn't have the facts that we needed. We just had an emotional issue brought on by one person. So I'm not afraid to call it a mistake. I'm a little bit of a risk taker. I went out and I took a look at the traps. And I put my hand in the trap that is used for, let's see, I guess it's for mink and muskrat. I have to be a little careful because I bruise very easily. So when I go around corners or hit myself, I can expect a bruise to appear. Well, I put my hand in the trap. Yes, it stung a little bit. No bruise. No after

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effects. I don't think this even comes close to rising to any form of a danger to anybody. And I would feel that, as I say, I'm in opposition to the bracket motion. I think we ought to pass this bill. We have a good bill. The counties have the option of going along with it or not going along with it in part. They've got flexibility. I think we've corrected the mistake or we will correct when we pass this bill, the mistake that we made two years ago. I urge you to vote against the bracket motion and eventually to vote for the bill. Thank you, Mr. Speaker. [LB5]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Stuthman, you are recognized. [LB5]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. I would like to engage in a little conversation with Senator Carlson. [LB5]

SPEAKER FLOOD: Senator Carlson is unavailable at this time, Senator Stuthman. [LB5]

SENATOR STUTHMAN: Okay. Thank you, Mr. Speaker. One of the issues that I'm very concerned with is the fact that we have a public right-of-way. And I've been continually reminded that, you know, trap setter catching these dogs and stuff like that are illegal traps. Yes, they may be, but how can we take care of that portion of it? And I think it's very simple because we have a bill that is on the books right now where we do not allow trapping in public right-of-ways. To me, it's a lot different than trapping on private land. You know, you can allow trapping there. You can allow any types of traps on those...on that property with permission. I think the issue comes down to, are we here in the body, you know, going to allow, you know, trapping in a public place? And this public place is designated as a county road right-of-way. And that's for the public to use, if needed. That is why, that is why, you know, I supported the bill two years ago. I don't think we made a mistake two years ago. Yes, there were some emotions there about someone's pet being caught in a trap in a public right-of-way. But that, in my opinion, did not weigh very much on my decision to not allow trapping in a public right-of-way. The issue that I was concerned with is the fact that it was public place. And you're allowing people to come in there and put traps in a public place where people can go there. You can walk down the road ditches. You can pick up litter. We can...we have county employees that are, to tell you the truth, they are in control of those county road right-of-ways. When an individual wants to do something in that county road right-of-way because it's the public right-of-way, you must get permission. A lot of counties, you know, during the winter months and it would be in the trapping season through the late fall and winter, you know, do clean up these road ditches. There's a lot of furniture within several miles of my largest community that is dumped in road ditches. And the county does go and clean that up. And I don't think they should have to be concerned about traps placed in those road ditches. Also, I have been contacted by a lot of people, a lot of constituents of mine, people throughout the state, saying, you know, we should not allow the

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trapping in the county public right-of-way area. I think I've only had one, maybe two, that really supported repealing of this bill and allowing trapping. And this was a trapper that came, probably drove 150 miles to come down here and try to lobby me, and I asked the individual, I says, how much of your trapping do you do in county road right-of ways? He says, very little. I says, well, where do you do most of your trapping? I do it on private land. I get permission from private property owners and trap in there. So I says, why do you want to have to trap in that county road right-of-way? [LB5]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: One minute. [LB5]

SENATOR STUTHMAN: Well, we would just like to be able to trap there by bridges and stuff like that. I think the fact, in my opinion, is the issue of, do we want to allow an activity to take place in a public right-of-way that could harm children, could harm workers, could harm people that are cleaning up, beautification of the right-of-way, could harm them? So that, that is the issue that I'm coming from. Now, Senator Friend, he said this is really not a filibuster. In my opinion it's not. And we will probably never see a professional filibuster. [LB5]

SENATOR CARLSON: Time. [LB5]

SENATOR STUTHMAN: Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Stuthman. Those wishing to speak: Senator Nantkes, Hadley, Karpisek, Christensen, and others. Senator Nantkes, you're recognized to speak. [LB5]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I rise in support of the bracket motion and it's for greater reasons than the substantive nature of the underlying bill. It's been mentioned by some of our colleagues this morning as well about their frustration with the amount of time that we as a body have spent on this issue. And not to diminish the importance that Senator Christensen believes that this issue has, but wake up, Nebraska Legislature. Read your papers. Watch your television. Talk to your constituents. The Nebraska economy, while doing better than our national economy, is also starting to struggle. February 17, Smithfield Foods announces it's going to lay off 1,800 workers, closing a plant in Hastings. February 16, 33 jobs at a Neapco plant in Beatrice are lost. February 4, Time Warner Cable announces over 1,200 people laid off, including some in Nebraska. February 9, the UNK faculty proposes pay cuts to ward off job cuts. February 12, Lincoln home sales are the lowest since they've been since 2000. February 18, Sherman County Bank fails. Colleagues, we have serious issues to deal with. Our constituents sent us here to help ensure they have the opportunities to take care of their family's basic needs and provide

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a strong quality of life for each of these workers in each of our communities. We've been presented with a fantastic opportunity to address these issues through the newly enacted federal stimulus plan. These are the issues we need to be talking about. These are the issues we need to start crafting a procedure for how to deal with, because these are the opportunities to save or create 23,000 jobs across this state. Thank you, Senator Ben Nelson, for ensuring we have a federal stimulus plan. Thank you, President Barack O'Bama, for realizing communities are crying out for help. Nebraska Legislature, we need to stand together to focus on these issues because they impact education, they impact jobs, and they impact the future of this state. Let's start dialoguing about these real substantive issues. That's what we were sent here to do. That's where we need to spend our time. That's why I'm voting in support of the bracket motion. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Nantkes. Senator Hadley, you're recognized. [LB5]

SENATOR HADLEY: Thank you, Mr. President, members of the body. I, too, went out and looked at the trap and it's a very nice young man from Game, Fish, and Parks. And I asked him, are there times where we might want to go on public land to trap because of the damage that animals are doing? And he said, yes. He said, you could have animals burrowing underneath the asphalt that eventually the asphalt will crack, it will come apart, you will have to repair the road ditch or the road, bridges, and such as that. I would ask...is Senator Stuthman available for a question? [LB5]

SENATOR CARLSON: Senator Stuthman? I don't believe that he is. [LB5]

SENATOR HADLEY: Is Senator Haar available for a question? [LB5]

SENATOR CARLSON: Senator Haar, would you yield to Senator Hadley? [LB5]

SENATOR HAAR: Yes. [LB5]

SENATOR HADLEY: Senator Haar, how, if a county has a problem with burrowing animals in the public right-of-way that are doing damage to roads, to bridges, to the infrastructure of the road, if we defeat LB5 they have no legal right to go on the public right-of-way to trap those animals, how would you handle this situation? [LB5]

SENATOR HAAR: Well, that's a good question, and I think it has to be answered. And we had an amendment earlier, but we could have another amendment on this bill that would allow that power. I think that's very reasonable and I believe Senator Stuthman did have an amendment of that sort and that was voted down. [LB5]

SENATOR HADLEY: Okay. Thank you. [LB5]

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SENATOR HAAR: But I do believe that that's an important consideration. Thank you.
[LB5]

SENATOR HADLEY: I did support Senator Stuthman's amendment that did allow this and it did not pass. I think the bill with Senator Campbell's amendment and Senator Wightman's amendment basically from a back doorway gets at the issue I'm talking about because counties can deny trapping. But it also allows them, if there are areas that they need to have trapping in the roadway, that they can do it. So that's why I'm not going to support the bracket and I will support the underlying bill with the two amendments that allows counties the right or the ability to handle problems in the public right-of-way. Thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Hadley. Senator Karpisek, you are recognized. [LB5]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I did vote for the ban two years ago and I don't think that we made a mistake. I thought that it was a good idea. And I would be voting against this bill for the bracket motion had it not been for Senator Campbell's amendment. To me, that makes it better. Let the counties decide. We've got such a diverse population here in the state. Seems like those of us over on the east end, maybe around the metropolitan areas, don't want the trapping. Out west they do. They think they need it. Fine. Let's let them do that and let everyone know where it is, where they have it. Again, if it wouldn't be for that amendment I would be voting against the bill. I do want to bring up while we're on the subject of things gone wrong in the past, and I should let this die, but I'm not going to. We enacted a smoking ban last year and everyone here knows how that one went. The bill moved off General and Select File with an amendment to get off of a filibuster. On Final Reading the amendment was pulled and it was passed. I tried to correct that wrong this year, but my bill got killed in committee. So we don't want to talk about righting wrongs, whether we think it's right or it's wrong. This is a different situation. This is a different bill. We're talking about giving local control back. So I will support the bill the way it is now, and I will vote against the bracket motion. I want to thank Senator Campbell for, in one of her first days here, to come up with a...what I think was a very good compromise and very, very intelligent thinking on her feet. You can tell she didn't come to this board or this Legislature without any further experience. So I want to give her some kudos, and I think that we can get off this. We do have other issues to talk about as Senator Nantkes very eloquently pointed out. We have other things, we have other amendments on this bill. I think Senator Langemeier has an amendment that we want to get to, so let's please get going if this isn't a filibuster. If it is, then let's do it. Thank you, Mr. President.
[LB5]

SENATOR CARLSON: Thank you, Senator Karpisek. Those still wishing to speak:

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Senators Christensen, Haar, Pirsch, and Lautenbaugh. Senator Christensen, you're recognized. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. I want to come out in opposition to the bracket, and support of the bill. And, you know, we do have a good bill. And with the amendment Senator Campbell put on here, we have something that's worth going forward. I appreciate what we've done. We've put the local control in. We allow locals to request their counties to opt out if they'd like to. We have the rules and regulations to allow very little risk. And if you haven't looked at the traps, I encourage you to go look at them and see it illustrated if it's a concern to you because these legal traps are set up to be with very little risk to you. And then we had a comment to Senator Stuthman earlier, he said that this would control illegal traps if we left the ban in. I remind you, a former colleague, Senator Carol Hudkins's husband got caught in an illegal trap while this ban was in place. You can't regulate criminals. I'll say it again. If they're using illegal traps, they're criminals. You prosecute them. So, and again, he also brought up traps are a concern for the county people working there. If you believe that's a concern, step out, look at the traps, stick your foot in it, it won't even close around it. You'll put to rest this argument there is risk for county people walking out there in the road ditches. You know, Senator Nantkes brought up the fact that we need to deal with economic issues. We're dealing with an economic issue right here. The economy was cut \$159,000 on pelts. The economy lost \$560,000 in grain losses. Is it only the businesses in Lincoln and Omaha that count? No. I don't...and I don't think she meant that, but I think she forgot about the impact that is caused in western Nebraska by the bill that was or amendment was done two years ago. You know, businesses across this whole state make up this great state. I don't want to lose any jobs that Senator Nantkes mentioned. I don't want to lose any jobs in western Nebraska either. I agree with Senator Nantkes that we need to move on to another subject. And we can do that very simply, people--turn your lights off, vote it up or down and move forward. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Haar, you're recognized. [LB5]

SENATOR HAAR: Mr. President, members of the body, I want to apologize for my lack of decorum a minute ago. I have learned now that we're always to go to our own mike and that's fair. Thank you very much. I have a question for Senator Nelson. [LB5]

SENATOR CARLSON: Senator Nelson, would you yield? [LB5]

SENATOR NELSON: Yes. [LB5]

SENATOR HAAR: Okay. Thank you. And this is just...I didn't have the guts to put my hand in the trap that had two springs on it. Did you do that or...I guess really the question is, and we only have opinions on this now, but if a child, my seven-year-old

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granddaughter put her hand in that trap with two springs, do you think it would damage her? [LB5]

SENATOR NELSON: I can't answer that, Senator Haar. The trap that I tried out was what I understand to be, a body gripper, which grips the body in some place and holds it. In the case of a muskrat where their spine is so thin, it's likely to break it. I didn't try...your heavier trap, is this what you're talking about? [LB5]

SENATOR HAAR: Yeah, the heavier trap they had there. [LB5]

SENATOR NELSON: No, I did not try that and I don't know. That's the one I think that people can put their feet in and I don't...I can't answer your question about that. [LB5]

SENATOR HAAR: Okay. And again, this is just some of the things I tried and I wondered if you did this. Did you actually try to open that with your hands or not? [LB5]

SENATOR NELSON: No, I did not. [LB5]

SENATOR HAAR: Okay, because I couldn't open it, so if Alicia got her hand caught in it, I don't know how I'd get her out of that trap because I couldn't, I couldn't grab those two springs and open it. But, and again, I was just wondering what your impression of those was. [LB5]

SENATOR NELSON: Well, you appear to me to be a healthy, strong person and I don't understand why you wouldn't be able to open the trap if you really exerted yourself. But that would be the only answer that I have, Senator Haar (laughter). [LB5]

SENATOR HAAR: Yeah. No, the one you put your hand in I could open. I'm not...(laugh) It's the other one that has two springs on either side that...and I'm not as strong as I look (laugh). [LB5]

SENATOR NELSON: I didn't handle any one because my experience with mousetraps tells me one way or another, I'm going to get caught in the mousetrap before I finally get it set. So I didn't hazard that. [LB5]

SENATOR HAAR: Okay. Thank you. [LB5]

SENATOR NELSON: Thank you, Senator. [LB5]

SENATOR HAAR: Thank you. And I, again, will pursue with some orthopedic people whether...I'm going to get copies of those traps, get some duplicates and see if they might hurt children or not. Thank you very much. [LB5]

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SENATOR CARLSON: Thank you, Senator Haar. Senator Pirsch, you are recognized. [LB5]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I wonder if...well, I'm going to make a few remarks. My concern about the way in which people are viewing the proposal, I think, hinges in large part on the feature of having an opt in or opt out provision included in this bill. And to the extent that that does shape the way people think about the bill, I have some questions with respect to the Legislature's ability to delegate our legislative power to a nonlegislative entity, namely, county boards. And so I wonder if Senator Campbell might yield for a quick question? [LB5]

SENATOR CARLSON: Senator Campbell, would you yield? [LB5]

SENATOR CAMPBELL: Thank you, Mr. President. My understanding of working with county boards is that counties have the right to a resolution, which is not...does not have the same power as an ordinance, Senator Pirsch. [LB5]

SENATOR PIRSCH: Very good. Is a county a quasi-executive entity? [LB5]

SENATOR CAMPBELL: It fulfills the functions that you would think of, that a city would have a mayor or the state would have a governor. But an important thing to keep in mind when you look at county government is that county government throughout its history has been an arm of state government. So the powers that have been given to it really come from the Legislature. And, again, I am not an attorney, so if that's not correct...I hope that answers your question. [LB5]

SENATOR PIRSCH: Sure. Oh no, and I just wanted to establish it is a quasi-executive entity. Is there...I guess, can you think...and you've served on the Lancaster Board of Commissioners, correct? [LB5]

SENATOR CAMPBELL: Yes. [LB5]

SENATOR PIRSCH: And for how many years did you serve, Senator Campbell? [LB5]

SENATOR CAMPBELL: 16. [LB5]

SENATOR PIRSCH: Sixteen. Can you think of in that...in your career there on the board, was there an instance that comes to your mind, a recollection of similar type of a constructed...a construction of the law where the state had delegated, the Legislature had delegated the power to the county to essentially decide to opt in or opt out of some sort of a law like this? [LB5]

SENATOR CAMPBELL: Senator Pirsch, to my recollection, I don't remember an opt in

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and out. But certainly the Legislature has over the years, particularly in zoning matters, given very strong powers to the counties. [LB5]

SENATOR PIRSCH: Very good. I appreciate your comments. I'll ask Senator Lautenbaugh if he'd yield to a question. [LB5]

SENATOR LAUTENBAUGH: Yes, I will. [LB5]

SENATOR PIRSCH: Very good. Thank you, Senator. I guess, are you familiar with a similar paradigm utilized currently or in the past whereby the Legislature gave counties permission to either opt in or opt out of what would otherwise would be a mandatory law? [LB5]

SENATOR LAUTENBAUGH: Provision where we've given a county the means to opt out? [LB5]

SENATOR PIRSCH: Right. Otherwise said, this shall be the law of the land throughout Nebraska except for the counties may in fact say, no, we're not...our county will not be subject to that. Opt out, essentially, or opt in, either way. [LB5]

SENATOR LAUTENBAUGH: I honestly can't think of any example. [LB5]

SENATOR PIRSCH: Okay. And I guess that's where my concern lies. We have a constitutional separation of powers. We are the legislative branch. We make the laws and as much as we would love...in some circumstances a case law would show us in the past to give those legislative powers to other entities, the executive branch, the judicial branch, we cannot give nor as much as they would like to receive those powers, they cannot receive in many instances those powers if they are forbidden because of the nature of what we're attempting to confer. And so that is my concern with regards to this. And because I think people's viewpoint of this may be colored by the understanding or the perception that... [LB5]

SENATOR CARLSON: Thirty seconds. [LB5]

SENATOR PIRSCH: ...that they are going to be...that the counties will have the ability to opt in or opt out and so I just want to question that. We can't...it's similar to giving the Governor the power, wouldn't it be, to decide, you decide which counties should be allowed to have trapping, wouldn't...and that's my, you know, we're out of time. But I wish that could be addressed by other members of the body here a little bit. Thank you. [LB5]

SENATOR CARLSON: Time. Thank you, Senator Pirsch. (Visitors introduced.) Senator Lautenbaugh, you are recognized to speak. [LB5]

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SENATOR LAUTENBAUGH: Thank you, Mr. President. I'd call the question. [LB5]

SENATOR CARLSON: What did he say? The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB5]

CLERK: 37 ayes, 3 nays to cease debate, Mr. President. [LB5]

SENATOR CARLSON: Debate does cease. Senator Stuthman, you're recognized to close on your motion. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. As we have debated the issue, there are people that, you know, are very concerned about the fact that what is attempted to happen in a public place. That is also very much of a concern of mine, allowing trapping in a public place. Yes, I realize that, you know, what is called a legal trap in a public right-of-way, you know, are the smaller traps. But when we allow an activity in a public right-of-way, an activity such as trapping, and have designated legal traps there, that also creates the fact that there's a very, very good possibility that there are going to be some illegal traps that are placed in that county right-of-way because the issue is trapping is allowed in public right-of-way, county public right-of-way, road right-of-ways. And I think the issue that we're hearing, you know, that animals, county workers, individuals, have stepped in these traps. Yes, they're illegal trappers' traps. But the activity of trapping is still allowed. I mean, is what they have intended it to be, they would like to get it back to have trapping allowed in the county road right-of-ways. I am very concerned of the fact that, why do we allow, you know, trapping in a county road right-of-way which is actually for public use, when there are so many other acres and sites available for these trappers to trap in. That is the concern of mine. So I would ask that you support the bracket motion. I think this is the right direction to go and those are my closing comments. Thank you, Mr. President. I would ask for a call of the house. [LB5]

SENATOR CARLSON: Okay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB5]

CLERK: 44 ayes, 0 nays, Mr. President, to place the house under call. [LB5]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those Senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. All members are present. We've had request for a roll call vote in regular order. Mr. Clerk, please proceed. [LB5]

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CLERK: (Roll call vote taken, Legislative Journal pages 475-476.) 14 ayes, 30 nays, Mr. President, on motion to bracket. [LB5]

SENATOR CARLSON: The motion to bracket fails. Items for the record. The call is raised. [LB5]

CLERK: Mr. President, items. Retirement Systems Committee reports LB23 is indefinitely postponed, that signed by Senator Pankonin as Chair. New resolutions: LR24, Senator Rogert, will be laid over. LR25, Senator Rogert, that will be laid over. LR25, Senator Loudon, excuse me, that will be laid over. New A bill: (Read LB669A by title for the first time.) I have a hearing notice from Health and Human Services Committee and the Judiciary Committee. I have a communication from the Executive Board regarding reappointment of the LR11 Committee, and I also have a Reference report regarding certain gubernatorial appointees, and a confirmation report from Retirement Systems Committee. That's all that I have, Mr. President. (Legislative Journal pages 476-479.) [LB23 LR24 LR25 LB669A LR11]

SENATOR CARLSON: We go back to debate on LB5. Mr. Clerk, next amendment. [LB5]

CLERK: Mr. President, LB5, Senator Lathrop, AM347. Senator, you may recall, you opened on this amendment yesterday. You presented the amendment yesterday, Senator. (Legislative Journal page 471.) [LB5]

SENATOR LATHROP: Yes, I did. Do you need a summary? [LB5]

SENATOR CARLSON: Senator Lathrop, you're recognized for a summary. [LB5]

SENATOR LATHROP: The AM347 is an amendment to or proposed amendment to LB5, the substance of which would be to provide for strict liability for anyone who is engaged in trapping in roadside right-of-ways, which leads to the harm of a person or animal, cat or horse. The trapper, if this amendment is adopted, would be strictly liable for any injuries or damages as a consequence of a person, cat, dog or animal being caught in a trap. [LB5]

SENATOR CARLSON: You've heard the review on AM347 to LB5. Are there senators wishing to speak? Senator Friend, you are recognized. [LB5]

SENATOR FRIEND: Thank you, Mr. President. I see you've been...and members of the Legislature, I see, Senator Carlson, you've been placed in the penalty box. That's appropriate. (Laughter) Members of the Legislature, I've got a record of the first bracket motion. I know exactly how that vote went. I've got a record of the second one. I know

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exactly how that went. And it went differently. And I changed my vote. And I was going to speak to that and then I turned my light off and we went to the vote. It's real simple. We had a bracket motion on General File. We had an IPP motion on General File that was actually lifted. We didn't even get a chance to vote on that. And by the way, an IPP motion on General File, you don't need 25 votes. If you don't call the house and there's only 40 people out on the floor, you need 21 and the bill's dead, unless the person is smart enough to call the house and then run a roll call vote or something of that nature. We've had ten motions on this bill. One of them still exists in AM347. There's been a feeling, and I don't want my comments earlier to be mistaken at all for me wanting to move on through this process. I don't care if this is the dumbest bill on the face of the earth that I've ever seen in my entire life, that is absolutely irrelevant to the idea of whether we should continue this discussion. I do think the bill is stupid. I will not stray from that mentality, but the fact that we had nine lights on after I said that means that people wanted to talk about it. So on we go, and Senator Lathrop has an amendment here that we need to deal with. And he's...and I've talked to him twice, he's fairly serious about it, so let's deal with it. We've got all these important issues in life to deal with. You know what, I've dealt with prairie dogs, we've dealt with...and those were important to a heck of a lot of people. You know how I know that? We spent eight hours dealing with it, and Senator Loudon had to cloture the dang bill. I'm using slang because that's how I deal with prairie dogs. (Laughter) This is, according to "bloviators" like Senator Friend and others, this is a stupid, unimportant bill. Really? Well, we're still on it and we're still talking about it. And according to the rules, that's what we end up having to do. So with that said, let's talk about AM347 for a second. Let's talk about strict liability. I have not heard one argument yet that satisfies me, no offense to Senator Lathrop, that strict liability is a really great idea under these circumstances. However, I haven't heard anybody counter his lame argument. He's not lame. I'm saying his argument is lame. He's a very intelligent friend of mine. I'm saying strict liability (laugh) under these circumstances is a lame argument. However, the problem that we have is, I haven't heard anything productive yet to counter it. (Laugh) Sorry, can't see you. He's still in the penalty box. [LB5]

SENATOR CARLSON: One minute. [LB5]

SENATOR FRIEND: So here's where we're at. Strict liability is a pretty serious idea and concept. It's been used. It's been used and it's being used in a really interesting way in this state. We have to ask ourselves whether AM347, and I really...I don't know, maybe we should move on based on this discussion, but really have to ask ourselves whether AM347, strict liability, is a decent idea for a bill that's virtually worthless, that I would consider fairly stupid. So we're making a dumb bill better or worse? Am I debating myself? I don't really care. I don't know what to do with this. Frankly, we can talk about it until we're all blue in the face. [LB5]

SENATOR CARLSON: Time. [LB5]

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SENATOR FRIEND: Make your decision (laugh). Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Friend. Senator Lathrop, you're recognized. [LB5]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'd like to talk about our argument today. You know, when we come on the floor, and maybe it's the training as a lawyer, but when we come on the floor it's a place for logic, it's a place for applying reasoning to facts, listening to arguments. And today we've heard what happened two years ago called a mistake, a mistake because that was somebody's idea of a mistake. And I think we're engaged in a little bit of intellectual dishonesty today listening to the argument. And maybe I can point that out with a couple of questions to Senator Christensen if he will yield. [LB5]

SENATOR CARLSON: Senator Christensen, will you yield? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR LATHROP: Senator Christensen, I think I heard you, just before we took this last vote, say that the bill LB5 is something that should move. It has the local opt out and you think it's in good shape and that's a good idea and it's ready to go. Did I hear that right? [LB5]

SENATOR CHRISTENSEN: With the addition of Senator Langemeier's change to make them happy, yes. [LB5]

SENATOR LATHROP: Okay. In other words, once we get that local opt out, you're good with your bill and you think everybody ought to give her the green light, is that right? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR LATHROP: Okay. Now, for two years you've been bringing the concealed carry bill back to this Chamber for a vote, and the very reason that you give the Judiciary Committee and the people in this body that we should pass your concealed carry bill is that the local opt out is unacceptable, am I right? [LB5]

SENATOR CHRISTENSEN: Correct. [LB5]

SENATOR LATHROP: But it's okay in a trapping bill? [LB5]

SENATOR CHRISTENSEN: There's a big difference between the two situations though.

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[LB5]

SENATOR LATHROP: Well,... [LB5]

SENATOR CHRISTENSEN: You've got...you want me to explain? [LB5]

SENATOR LATHROP: Well, maybe I'll let you explain that on your own time but before you...I've got another one for you. If this is a big mistake and the Supreme Court just told us that LB701...this isn't a matter of discussion, LB701 on the water bill passes and it was a mistake. We did something the Nebraska Supreme Court said is unconstitutional. Have you offered a bill to repeal what's left of LB701? [LB5]

SENATOR CHRISTENSEN: I'm working on it. [LB5]

SENATOR LATHROP: To repeal LB701? [LB5]

SENATOR CHRISTENSEN: To repeal the unconstitutional parts and address any further questions, yes. [LB5]

SENATOR LATHROP: Well, we have nothing to repeal. After it's unconstitutional, there's nothing left to repeal, but there is a provision for occupational taxes. Do you have any...have you taken any steps towards putting a bill in to repeal what's left of LB701? [LB5]

SENATOR CHRISTENSEN: You can't introduce a bill now, but I can amend some I have in committee, yes. [LB5]

SENATOR LATHROP: And you intend to introduce a bill or an amendment that would repeal the occupation tax out of LB701? [LB5]

SENATOR CHRISTENSEN: We're still working on whether we're just going to try to amend the occupation as it is or just strike that and add something different. [LB5]

SENATOR LATHROP: Okay. Thank you. My point, if I can make one again, if anyone is still listening, is that when we come to the floor and we talk about our job making policy, we need to be prepared, our mind needs to be able to absorb discussion, able to listen to reason, and then we ought to be out here with intellectually honest debate. And for someone who is telling us that the concealed carry statute needs to be amended because of a local opt out and then to come on the floor and tell us that this bill is good because it's got one, is not honest intellectually. And for someone... [LB5]

SENATOR CARLSON: One minute. [LB5]

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SENATOR LATHROP: And for someone to call this a mistake, and I think Senator Carlson was the one, and I'm not going to try to engage you in a conversation, but you know, the Supreme Court told us LB701 was a mistake. Have we tripped over one another to fix that, to amend that, to repeal what's left of LB701? No, we haven't. Please. AM347 makes sense. I've given you the logic for it. I'd ask you to support it if you are, as it appears to be the case, determined to pass LB5. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Haar, you are recognized. [LB5]

SENATOR HAAR: Thank you, Mr. President, members of the body. First of all, Mr. President, I consider that a place of honor, not a penalty box. (Laugh) Some day, maybe, I'll get to sit there. Thank you. I would like Senator Lathrop to explain to me, a layman, exactly what the difference of liability is between his amendment and the current amendment? [LB5]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB5]

SENATOR LATHROP: Yes, I'd be happy to, and thank you, Mr. President. The law without this amendment would essentially leave to a case-by-case basis a determination as to whether or not a trapper who kills somebody else's dog or cat or hurts another human being, whether their conduct was reasonable. If a fact finder makes the determination done on a case-by-case basis that a person was negligent or failed to exercise reasonable care under the circumstances, then they'd be liable. It is conceivable that someone could conclude, a fact finder, that a trap was placed carefully. Maybe there was a sign, which isn't required now. Maybe there was a sign alerting someone and they should have seen the sign and been warned. There are circumstances under which there might not be liability using a negligence standard. Under the amendment, if you place a trap and a domestic animal or a person gets hurt, you pay for whatever vet bills or consequences follow. [LB5]

SENATOR HAAR: Thank you. That was my question. [LB5]

SENATOR CARLSON: Thank you, Senator Haar and Senator Lathrop. (Visitors introduced.) Those wishing to speak: Senator Lautenbaugh and Senator Stuthman. Senator Lautenbaugh, you're recognized. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I hope Senator Friend is listening wherever he is because I'm hoping he's going to hear a reason why strict liability is a bad idea. I thought I'd made this clear yesterday, but apparently I failed. I did, I'm hearing. What does strict liability mean? Strict liability means you don't have to prove negligence on the part of the trapper. The person is just held liable if someone claims an injury. They're liable for that injury, no matter what.

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Years ago we did this for police chases for the city of...well, everywhere in the state. Police chases, strict liability if anyone is harmed. That was argued to be an inherently dangerous activity. I would point out that we don't apply that standard to all police activities. If some police officer accidentally shoots someone, still a negligent standard is applied, not strict liability. But the Legislature chose to put strict liability on that particular activity. And there is evidence. There have been people injured in police chases. That has the virtue of having actually happened in reality. The other classic example of strict liability is a dynamite factory or a tiger farm, if there is such a thing. Because no matter how well you cage up the tiger, the tiger is going to get away, someone is going to be hurt. So the operation of a tiger farm is so dangerous we impose strict liability. Now, let's make the leap to where we are now. We are talking about, at best, a hypothetical danger that we want to impose strict liability for a hypothetical danger. This is not a traditional set of facts upon which you impose strict liability. We still look to negligence, like we do in police shootings, like we do in car accidents, like we do in most everything else. Strict liability is rarely used and only used with good reason. And if you haven't heard good reason here, as Senator Friend admits, then in and of itself you should not vote for this amendment. But read the amendment, read what it says: Any person trapping wildlife in the county road right-of-way shall be civilly liable for any damages or harm to another person or any domestic animal. It doesn't say damages flowing from trapping. It says if you are trapping and you cause damages, but it doesn't say the damages flow from trapping. So if you're out there trapping and you have a car accident with someone, are you strictly liable? This amendment doesn't say but the argument could be made. This amendment just says if you're a trapper you're strictly liable, not if your traps cause harm. It doesn't say that. And what does it mean to be strictly liable? That means someone just has to prove damages against you. And we heard yesterday that no lawyer worth his salt would take a case where the damages don't really exist. I would point out to you that is not a statement that no lawyer would take the case. That is a statement that no lawyer worth his salt would take the case. I would submit that like in any profession, we have plenty that fit the definition either way. We all have frivolous lawsuits. We all know of frivolous lawsuits in this profession, my profession. I deal with them frequently. And I will tell you that, aside from the fact that people can proceed pro se, and we have a very committed lobby of activists who would love to proceed pro se under this statute alleging harm from someone who's engaged in trapping. And how do you prove harm? What is harm? It doesn't have to be a physical injury. You can allege it. Doesn't have to be objectively observable. And if you don't think you can get a doctor to substantiate about any given injury you want if you ask enough doctors, I'm telling you, you've never practiced law. If you're a truck driver, how do you get permanently and totally disabled from a mental disability? [LB5]

SENATOR CARLSON: One minute. [LB5]

SENATOR LAUTENBAUGH: You have a 5 percent back impairment and it becomes

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very easy, because I've seen it time and time again. You find a doctor who will say, well, and this has caused a mental difficulty and he can't work anymore. You can find a doctor to say anything you want. In this area of the law or in this area of what we're talking about where you've got antifur activists willing to run around and throw blood and red paint at people, do you really think they're going to be deterred by the niceties of, oh, this is a frivolous claim, we shouldn't cloud up the court system? No. They will come and they will keep on coming and they will find people to substantiate their claims and these trappers will be put in the position of trying to rebut something at their own expense. This is absolutely the wrong area to impose strict liability on. The frivolous claims will come. They come now; they'll come with a vengeance under this. And to say you can't find a lawyer that will bring it, that's not true. Say you can't find a doctor that will substantiate hypothetical harm? That's not true. It happens all the time. It will happen under this. [LB5]

SENATOR CARLSON: Time. [LB5]

SENATOR LAUTENBAUGH: Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. (Visitors introduced.) We return to debate on AM347. Those wishing to speak: Senator Stuthman and Friend. Senator Stuthman, you're recognized. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a little conversation with Senator Lathrop. [LB5]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB5]

SENATOR LATHROP: Yes, I would. [LB5]

SENATOR STUTHMAN: Senator Lathrop, in your amendment, which I'm very supportive of, the fact that I have a concern is what if a person is hurt by an illegal trap, which is not legal in a county road right-of-way, and there's no method of identifying who owns that trap? What happens then? [LB5]

SENATOR LATHROP: Well, that's part of the anonymous nature of traps. They're put there if they don't...the Game and Parks regulations require that you have your driver's license number on the trap. If somebody hides the trap in the grass so no one can see it and it springs on somebody and hurts them and there's no identifying number, you're just out--one more casualty. [LB5]

SENATOR STUTHMAN: Would the Game and Parks be liable because they have allowed trapping? [LB5]

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SENATOR LATHROP: No. [LB5]

SENATOR STUTHMAN: They would not be liable. Would the property owner be liable because that is his property? [LB5]

SENATOR LATHROP: Only if the property owner knew that the person was out there illegally trapping. [LB5]

SENATOR STUTHMAN: Okay. I would like to give the balance of my time to Senator Lathrop. [LB5]

SENATOR LATHROP: Thanks. That's timely because I'd like to respond to Senator Lautenbaugh's suggestion that Nebraska is being overcome by frivolous lawsuits. My experience is most of the frivolousness that goes on in lawsuits are the defenses that are alleged against meritorious claims. The strict liability, the suggestion, the torture of the language done by Senator Lautenbaugh, this amendment very clearly--read it--very clearly applies to those persons engaged in trapping. It is not a poorly written amendment. It is squarely...fits squarely under the circumstance of someone trapping, engaged in trapping on the county right-of-way. It is a perfectly appropriate circumstance for strict liability and I'll tell you why, okay, and I'll only say this one more time. Look at what we're doing. We are turning somebody loose with a trap that traps indiscriminately and giving him permission to do this in the right-of-way. Okay? There's no fence between the road and the right-of-way. The right-of-way is an open area. People picking up papers, if they have their dog with them, there's a lot of different reasons to be in that right-of-way. And what we're saying is people that are trapping can hide traps in the grass and snare people's domestic animals and people. Now is that an appropriate circumstance? Let me ask you this. What does all of your constituents that don't trap get from this bill? Anybody? They get nothing. Nobody benefits from this bill but the trapper, and if he's going to trap and indiscriminately snare animals, he ought to account for it. It's just the cost of doing trapping. And, by the way, we're getting pelts, we're making money, we're selling these things. Strict liability is a good idea when someone engages in conduct that benefits only them, no one else in the community, just them. If they want to do it, okay, do it. Go ahead. But if you're going to do it and you hurt somebody, then you ought to be the guy that pays because, guess what? If we don't have this kind of liability, if we don't do this, then who does pay? It's the lady that's out picking up aluminum cans in the ditch and has her dog along with her. Let's say the dog has a broken leg and she now has a \$500 vet bill. [LB5]

SENATOR CARLSON: One minute. [LB5]

SENATOR LATHROP: Who should pay that? That's really the policy question here: Who should pay that? Should it be the guy who's making money off the pelts and trapping in the ditch? Or should it be the lady who is picking up trash or aluminum cans

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in a ditch? It seems pretty obvious to me. But to stand up and start talking about frivolous lawsuits and we're going to have more lawsuits than you know what to do with, guess what, you...someone would have to go in our ditches and pad around in the grass to find one of these because they're hidden. We are not going to be overrun by PETA people filing claims, frivolous or otherwise. That is an argument intended to appeal to the Rush Limbaugh crowd who reacts to the word "frivolous lawsuit" like it's happening in Nebraska, and they are not. Thank you for the time, Senator. [LB5]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Friend, you're recognized. [LB5]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I was wondering if Senator Lathrop would answer a quick question. It's not a long, drawn out type of deal. [LB5]

SENATOR CARLSON: Senator Lathrop, will you yield? [LB5]

SENATOR LATHROP: Sure. [LB5]

SENATOR FRIEND: Thank you, Senator Lathrop, and thank you, Mr. President. Senator Lathrop, if I were hunting from a vehicle and I'm hunting off the side of the road, I'm violating all kinds of Criminal Code but I'm also violating this section of statute. Let's just say, the hypothetical is, that I got out of my car, I shot at a varmint in the ditch and I hit somebody's dog. Am I strictly liable for...is there strict liability associated with my actions under those circumstances? [LB5]

SENATOR LATHROP: No. [LB5]

SENATOR FRIEND: Okay. Thank you, Senator Lathrop, and that excellent answer, and it leads me to my point here. I understand Senator Lathrop's amendment. I didn't mean to demean it...actually, I did. I called it lame earlier, but I did qualify it by saying Senator Lathrop is not lame. He's one of the smartest guys I know. I'm not brown-nosing him; that's the way it is. It's what I know. I don't think that this is, in all seriousness, I don't think that this is necessary. I don't think the bill is necessary, too. I've said that on four occasions, correct? I don't think the bill is necessary either, but AM347 is not either. So the circumstances that we're dealing with here now are that a certain portion of us on this floor don't like this bill and I think the numbers are against a certain portion of us. I think practically there's two ways to attack it. Senator Lathrop believes in this amendment. I will give him credit for it. Whether I think it's good or bad or otherwise is irrelevant to him. He really wants...he believes in the idea. I think he's going to take it to a vote and we'll see what happens. I just don't think it's necessary to hurt an already bad bill or a bill that we just don't need. That's my only point. I'm going to vote against this amendment because I don't like strict liability in general, and I wouldn't even classify

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myself as part of the Rush Limbaugh crowd that Senator Lathrop talks about, although I have no problem with Rush Limbaugh. I enjoy his commentary. That's not the point. Strict liability, in my experience...and, by the way, I sat on Judiciary for two years and have heard these arguments. Senator Lautenbaugh did an excellent job, by the way. That's what I was looking for. Maybe I lit a fire under him, I'm not really sure. However, 80 percent of what he said I already knew. I just wanted somebody to say it. Strict liability is a bad idea. I could shoot a guy's dog in a ditch and I'm not strictly liable for that? But if I plant some legal traps in a ditch, I'm strictly liable for the damages that occur? We are losing focus. I can hang my shotgun out the...I'll say it one more time, I can hang my shotgun out the window of a car, I can blow a dog away or I can be on the road or whatever, I can blow a dog away and I'm not strictly liable for that. Should I be? It's a different argument. I'm not. I'd still say, you know, vote against this bill, let's move on. AM347 I just think from a high-level viewpoint is not a great idea right now. Thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Friend. Senator Lautenbaugh, you're recognized. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I want to make sure my prior comments were perfectly clear. Not every plaintiff's lawyer would bring a frivolous lawsuit. Not every plaintiff is exaggerating his injuries. Not every doctor will say whatever you want to say. That was not my point. My point is that it is ridiculous to say it doesn't happen. We all know it happens. Now is every one in ten lawsuits frivolous? No. Is every 1 in 20 lawsuits frivolous? No. But what I'm saying here is that you're opening the door to frivolity with strict liability on these facts. We have a committed group that has demonstrated, not within this body, outside, that will do what it want...whatever it can to stop trapping on behalf of animal rights. I don't think I'm exaggerating here when I say they will jump on this if we grant strict liability so all you have to prove is damages. And again, read the amendment. It doesn't say damages from getting caught in the trap. It says if you're engaged in trapping, you're strictly liable. What does that mean? If the person just trips on a trap and doesn't get caught in it, you're still liable. As I pointed out, if you run over someone on your way to pick up traps, are you engaged in trapping? Are you strictly liable then, absent a showing of negligence? The amendment simply doesn't say. It just says if you're trapping you're liable. That would be an innovation in Nebraska law, I would argue, to find strict liability for such a remote threat like this. And we've heard appeals to logic and we've said what's the social utility and who benefits, it's just the trappers. That's not correct. We've heard that there are bridge maintenance issues here, there are highway maintenance issues here. Trapping does serve a public good. But even if that wasn't the case, the trappers benefit from it and it's a legal activity, except in these ditches currently. It's a legal activity. So I don't think you get down to balancing the social utility of an activity if you can't point out a harm, and once again, despite the best attempts of people here to get e-mails in here to say there is a harm from the traps we're talking about in the ditches we're talking about, I don't see it. We

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don't have anyone talking about these traps in question causing harm. We had 70 years of experience with these traps; no evidence they're causing harm. Yet here we are saying what's the social utility of this act as if we're balancing it against some harm. Show me the harm. I'm still waiting. We haven't seen it yet. And to say that a person should be strictly liable on these facts for engaging in the act of trapping, if traps are dangerous in ditches then abandoned tires are dangerous in ditches, then anything we find in a ditch is dangerous because you can trip over it. So maybe we should make people just strictly liable for everything that ends up in a ditch. That's what we're talking about here. That's the level we're at. Doesn't matter if it's open, you can see it. If you trip over it and you're hurt, by gosh, that person should be strictly liable. This doesn't say if you trip over a concealed trap and you're hurt or you get caught in a concealed trap. It says if you're trapping, you're liable. Regardless of how obvious the trap is, regardless of whether or not you have a big flag on the trap or even a sign that says, hey, look out, trap, you can be strictly liable if someone alleges damages from it. And once again, as I tried to point out, I've seen it. It's not every case. People can allege damages, people can find someone to substantiate damages, but they don't always exist. And we're opening a huge door here, a huge door unwarrantedly, in my mind. [LB5]

SENATOR CARLSON: One minute. [LB5]

SENATOR LAUTENBAUGH: Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Are there other senators wishing to speak? Seeing none, Senator Lathrop, you're recognized to close on your amendment. [LB5]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I should begin by commenting on what Senator Friend said, because he asked me a question and then I think he thought he understood the entire body of law and he didn't. There's a difference between strict liability and negligence or a deliberate act, what we call an intentional tort. You want to point a gun at somebody's dog and shoot it, you're going to be liable. But the doctrine isn't strict liability, it's an intentional tort. Okay? So we're not letting people get away with shooting somebody's dog, Senator Friend, and then holding them strictly liable for somebody getting hurt in a trap. Understand something, that when people talk about frivolous lawsuits, that's the...there's a crowd, you know who they are, you know why they do it, and they talk about it without any basis in fact. Are there lawyers that have filed frivolous claims? Yes. You look at the state...the chamber of commerce hands around this thing and shows where Nebraska is in relationship to the rest of the country on civil lawsuits. We are one of the best places to be a defendant, which means you're one of the worst places to be a plaintiff. These things don't happen in Nebraska, okay? They don't happen in Nebraska. And in my 28 years of experience, it's mostly frivolous defenses and people that are working on an hourly rate that waste the court's time than it is people who are bringing claims. I go back to the argument that

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I made before and you listen to the people who are opposing this amendment and they say, this will never happen, you can't get hurt in these things. And my answer is, well, boy, you're sure protesting strict liability awful hard for someone who...for a cause of action that's never going to occur. Senator Friend is right, I am serious about this amendment. I do think that if somebody is going to hide a trap in the grass and snare indiscriminately, they ought to pay for the innocent bystander that gets hurt, whether that's a dog, a family pet. They ought to have to pay. This is a perfectly reasonable application of the doctrine of strict liability. There is nothing silly about it. And to suggest that PETA is going to send a legion of people into Nebraska to look in the grass--remember, these are all hidden, that's the nature of a trap--try to find a trap, try to get their hand caught and then bring a frivolous claim is ludicrous. And if you're down here trying to make decisions and make policy on an argument like that, we got problems. The amendment makes sense because if one person benefits and they expose everybody else to a risk of harm, however slight and however gross, that person who benefits from the license we're giving them today ought to be the person that's accountable to the innocent bystanders, the family dogs, the people that are picking aluminum cans up in the ditch, the roads workers, the utility workers, the people that go on to the right-of-way lawfully and get caught up in these traps. I think AM347 makes perfect sense. I'd ask you to support it. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Lathrop. You have heard the closing on the amendment. Question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Senator Lathrop. [LB5]

SENATOR LATHROP: Can I get a call of the house, please? [LB5]

SENATOR CARLSON: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye and all those opposed vote nay. Record, Mr. Clerk. [LB5]

CLERK: 37 ayes, 0 nays to place the house under call, Mr. President. [LB5]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Lathrop. [LB5]

SENATOR LATHROP: Can I get a roll call vote in reverse order, please? [LB5]

SENATOR CARLSON: Okay, a roll call vote has been requested in reverse order. Senator McCoy, the house is under call. Please return to the Chamber. Senator Coash, the house is under call. Please return to the Chamber. Senators Coash and McCoy, the house is under call. Senators McCoy and Coash, please return to the Chamber.

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Senator Lathrop? Senator Lathrop is willing to proceed. Mr. Clerk, please proceed. [LB5]

CLERK: And you did say reverse order, Senator? Thank you. (Roll call vote taken, Legislative Journal pages 479-480.) [LB5]

SENATOR CARLSON: Record, Mr. Clerk. [LB5]

CLERK: 18 ayes, 30 nays, Mr. President. [LB5]

SENATOR CARLSON: The amendment fails. Mr. Clerk, next amendment. The call is lifted. [LB5]

CLERK: Mr. President, Senator Langemeier would move to amend, FA12. (Legislative Journal page 472.) [LB5]

SENATOR CARLSON: Senator Langemeier, you are recognized to open on your amendment. [LB5]

SENATOR LANGEMEIER: Mr. President, members of the body, this amendment is not in any way a stall tactic or anything else on this bill. On General File, we as a body, amended LB5 with the Campbell amendment and then a Wightman amendment, and in reviewing what the wording was in that, it allowed the counties to adopt a resolution to prohibit trapping within a county. After further review, talking to the counties, reviewing some legal court cases, we determined that that resolution needs to be changed where it says that they are authorized to regulate by resolution. That way they would have the enforcement tool that goes with the intent of what the body's discussion was. I believe the intent was to allow them to opt out and then enforce that opt out. So this change in wording would do exactly that. It would allow them to make that decision to opt out and then enforce it. So I would ask the body adopt FA12 to make the previous amendment, that you did accept and put on LB5, work in the intent that the body asked it to. So with that, I'd ask you to adopt FA12. Thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. Senators wishing to speak are Christensen, Campbell, and Stuthman. Senator Christensen, you're recognized. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. I just wanted to get up and say I am in favor of this correction to it. I think it makes it better, puts the counties at ease. So I'd just ask for everybody to vote for this and move it on. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Campbell. [LB5]

SENATOR CAMPBELL: Thank you, Mr. President. I wanted to make the comment that

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while I have not liked LB5, I had put the amendment forward to make what I thought a bad bill a better bill, and I have to commend Senator Langemeier because I think he took that one step further to put some emphasis behind this and give the power to the counties. So I will support the Langemeier amendment. [LB5]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Stuthman. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask Senator Campbell a question. [LB5]

SENATOR CARLSON: Senator Campbell, would you yield? [LB5]

SENATOR CAMPBELL: Yes, Mr. President. [LB5]

SENATOR STUTHMAN: Senator Campbell, I've been looking at this and it seems like the body is trying to make the, like you said, the bad bill better. Would you be in favor of having a county posting signs as to whether to not allow trapping if this bill were passed? [LB5]

SENATOR CAMPBELL: Senator Stuthman, I think every county is probably going to approach this a little differently and I would hate to say to every county, you must post a sign or must not. We have had a resolution against trapping in Lancaster County for over 20 years. We've never posted anything except for the information that was available when we passed the resolution, and we really haven't had a problem. So I'm not...I'm not sure I would favor a sign, no. [LB5]

SENATOR STUTHMAN: And thank you for your comments. That is the situation that I'm thinking very hard on, the fact now that we've got, with this bill, if it would happen to pass, we would have that trapping is allowed in the state in county road right-of-ways, but we have the option of a county can opt out and not allow trapping in that county. But then also we got the next part of it, is that the county can opt in or allow trapping in a certain portion of the county. This is the issue that I have a real concern with, is you've got a county, and maybe counties will either allow trapping in the whole county or not at all, but we have the amendment to the amendment, which was adopted, that a certain portion of the county may allow trapping in a certain portion of the county. The issue that I have with the signage is the fact that people are not going to be aware of where counties have opted out and not allowed trapping in certain portions of a county, and allow trapping in another portion of the county. That is the issue that I am troubled with. We have, at the present time, we have a bill that seems to me is going to be a very piecemeal bill. It's going to allow counties to opt out and not allow trapping, and maybe a lot of counties will opt out of it. But I think there will be a number of counties that will allow trapping in the road right-of-way. I think the issue is a lot different in the counties of the state of Nebraska, those counties that are out more in the rural area. Their

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situation is probably the same on one end of the county as the other end of the county. But the fact in some of these other counties where you have housing developments starting up in portions of the counties, you know, the county may decide to allow trapping in 80 percent of the county, may not allow trapping in a designated area of one township or several sections where this housing development is, and I have a concern that maybe we should have that signage be available, should be mandatory that we notify the people, you know, where the areas are where trapping is allowed or trapping isn't allowed. [LB5]

SENATOR CARLSON: One minute. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President. That is the issue I have. I don't know for sure whether I will file an amendment. I've been waiting for an amendment to come down to require the counties, if they decide to opt out and not allow trapping, or a portion of the county. That is the concern that I have. So I'm just in protection of the people that are going to be going on these public right-of-ways, walking or doing anything. I think they should know, you know, where the area is. Yes, it can probably be publicized in papers, but I don't think everybody reads the papers. So thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Stuthman. (Visitors introduced.) Senator Wightman, you're recognized to speak. [LB5]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I did want to rise in support of FA12, brought by Senator Langemeier. I think it does clarify exactly what powers of enforcement the county officials will have. I know he's basing this on a Nebraska Supreme Court case. There were questions raised at the time that I had my amendment before the floor as to exactly what power the county commissioners would have, by way of resolution. I think basing it on the Supreme Court case, as Senator Langemeier has done by giving them the power to regulate, does clarify exactly what authority the county commissioners have. So I would urge your support for FA12. Thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Wightman. Senator Lautenbaugh, you're recognized. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Very briefly, I think this amendment is a great amendment. It clarifies what we tried to do the other day. I would just caution against tacking on a requirement of signage because I think that would discourage counties that want to opt out because of the additional cost of signage. I think that's something we should leave up to the county. If they want to put signs up, that's fine; if they don't, once again, the risk is minimal, I believe. But this is a good amendment. I urge you support it. Thank you. [LB5]

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SENATOR CARLSON: Thank you, Senator Lautenbaugh. Seeing no other lights, Senator Langemeier, you are recognized to close on your amendment. [LB5]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. Again, I ask you to adopt FA12. It cleans up the language in the amendment previously adopted to allow this bill to have the enforcement ability that everybody wanted when it was adopted. So with that, I would ask you to vote for FA12. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. You've heard the closing on the amendment. Question is, shall the amendment be adopted? All those in favor vote aye; all those opposed, nay. Are there others wishing to vote? Record, Mr. Clerk. [LB5]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of the amendment. [LB5]

SENATOR CARLSON: The amendment is adopted. Items for the record. [LB5]

CLERK: Thank you, Mr. President. A new resolution: Senator Lautenbaugh offers LR26, pursuant to that offer, a communication from the Speaker directing that LR26 be referred to Reference for referral to standing committee for purposes of conducting a public hearing; LR27, Senator Heidemann, that will be laid over; LR28, Senator Flood, that will be laid over. (Legislative Journal pages 480-483.) [LR26 LR27 LR28]

Mr. President, the next amendment I have to LB5 is by Senator Haar, AM238. (Legislative Journal page 483.) [LB5]

SENATOR CARLSON: Senator Haar, you are recognized to open on your amendment. [LB5]

SENATOR HAAR: Mr. President, members of the body, my amendment is very brief and basically I'm just going to read it. "Any person who intends to trap in a county road right-of-way shall first obtain permission," we all agree on that, "from the landowner whose property is adjacent to the right-of-way to place such traps and shall, at the trapper's expense, erect a sign each 200 feet along the line of traps to provide notice of such traps." Any person violating this subsection would be guilty of a Class V misdemeanor. The intent of this is simply to inform people where those traps are. You know, it doesn't say you have to have a sign right in front of the trap. It just says along that line of traps you have to have signs at no less than 200 feet. This, at a minimum then, provides a warning to me as a grandfather, not a place to go, the kids should not go down in the ditch for anything in that area. If you're walking your dog, it gives you an idea of, again, saying stay out of this area. It's sort of like putting the signs up by a minefield. It tells you where the danger is and, at a very minimum, I think people deserve this kind of notification. It was said earlier that, you know, you ought to be

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careful when you take your...allow your kids to go down in the ditch to pick a flower or whatever because there may be broken glass. Well, I would just respond to that again by saying it's illegal to throw stuff into the ditches, and we've already gone through that whole discussion saying that, you know, you can't provide illegal activity with a law. So I think again the ditches are a right-of-way and people at least deserve notification where that trapping occurs. Thank you very much. [LB5]

SENATOR CARLSON: Thank you, Senator Haar. You've heard the opening on AM238. Are there senators wishing to speak? Seeing none, Senator Haar. Excuse me. Senator Stuthman, you are recognized. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President. I would like to engage in a little conversation with Senator Haar. [LB5]

SENATOR CARLSON: Senator Haar, would you yield? [LB5]

SENATOR HAAR: Yes. [LB5]

SENATOR STUTHMAN: Senator Haar, in your amendment it's stated that if an individual wants to trap in a road right-of-way... [LB5]

SENATOR HAAR: Yes. [LB5]

SENATOR STUTHMAN: ...you have to make...have signage. [LB5]

SENATOR HAAR: Yes. [LB5]

SENATOR STUTHMAN: Okay. How are you going to deal with a situation then when a county, you know, doesn't allow trapping? [LB5]

SENATOR HAAR: Well, in that case though, where traps are not allowed, I think you don't have a problem. Because this just...this simply says that, you know, if you have traps you have to erect these signs every 200 feet. It does not give...it does not overrule...I don't see any instance where this would overrule the county's ability to opt in or out. It just says if somebody is trapping then they have to erect signs, warning signs. Does that answer the question or... [LB5]

SENATOR STUTHMAN: The concern that I have, Senator Haar, is the fact that, you know, do they have to work with a county? First of all, a trapper has to, you know, work with a county, you know. Is there trapping allowed in the county or is there trapping not allowed into the county? And I think that issue has to be addressed first... [LB5]

SENATOR HAAR: Okay. [LB5]

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SENATOR STUTHMAN: ...as far as the trapper to do that. According to your amendment, it is just that if a trapper wants to trap in a county road right-of-way he has to put up signage, but... [LB5]

SENATOR HAAR: Okay. Would you be willing to prepare an amendment to that amendment then that would...that would make that explicit? I, frankly, in my thinking, in my thinking, if it's not allowed by a county, that overrides this amendment, but I'm not sure of that. [LB5]

SENATOR STUTHMAN: Yes, and I would totally agree with you there. But in the perception that I had to start with is, you know, if a person wants to trap in a county road right-of-way, you have to put up the signs and I agree with you. I have filed an amendment, you know, that the county would be responsible of notifying, you know, the public that trapping is not allowed... [LB5]

SENATOR HAAR: Right. [LB5]

SENATOR STUTHMAN: ...or is allowed in those designated areas. [LB5]

SENATOR HAAR: Right. [LB5]

SENATOR STUTHMAN: And that's what my amendment would do and that would, you know, publicly notify and signage, you know, as to where trapping is allowed or isn't allowed. Because, you know, at the present time, if this bill would pass, then, you know, you wouldn't really know for sure if the county has opted in or opted out or what portions of the county, you know, are they going to allow trapping and which portions are they not going to allow trapping. That's the concern that I have. [LB5]

SENATOR HAAR: Right. I appreciate that. [LB5]

SENATOR STUTHMAN: So we will...I'll listen to the discussion. I just think that, you know, in your amendment, you know, anyone that plans to trap...and I think your amendment is good, I think it is very good, because if an individual, you know, wants to trap in an area, they should put up signs then when the traps are. That notifies the public of that activity in the road right-of-way. [LB5]

SENATOR HAAR: Right, I see that as a minimum. [LB5]

SENATOR STUTHMAN: Yeah. Yes. So thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Haar and Senator Stuthman. Senator Christensen, you're recognized. [LB5]

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SENATOR CHRISTENSEN: Thank you, Mr. President. First of all, the first part of this amendment, any person that intends to trap in a county road right-of-way shall obtain permission from landowners' property that is adjacent to it, is already in the Game and Parks regulations. I know it could be put in statute, but it's already the rules that's been used for years. I don't feel like that is necessary. The problem that you run into with signs, even though 200-foot apart, is I don't call far enough apart if you was going to go that direction. The problem I have with it is a lot of your trappers put quite a little money into this. Say it's in the water. They're doing beaver so it's an underwater trap. You know, they might be trying to get one beaver, one pelt, and use four or five traps in that location, spending 35 bucks, maybe 45 bucks, depending upon the company they're buying, when they bought them. They've got quite a little investment out there and someone driving by is going, ah, I know I can look in this area and get traps to use myself or to sell for junk iron or whatever they'd want to do. You know, I don't like that part of it. If you go back and look, it's kind of like having a study done, 70 years of history we didn't have problems, we didn't used to have signs. I really don't think that it's necessary to go down this road. And the next thing is you can also have people say, well, there's signs here so I'm going to look, see is there pelts caught. All right. In that literature from 2007 I handed out, pelts of bobcats, 150 bucks. You're just inviting somebody to come take a high-dollar pelt. They maybe won't take the trap, but they'll take the work of somebody else. And so I really hate to see the marking of signs because it allows the people that want to be criminals a little extra hand on attacking. I don't think we have heard justification yet of why these traps are dangerous. Their traps are out here. They can be looked at. When people stick their hands in them, stick their feet in them, there's no bruising, there's no marking. What are we wasting time with so much detail here on this bill? It is not necessary. You know, show me the hazard and the problem and we'll talk, but I'll stick my hand in it. I had it snap on my hand this morning when I was setting it, didn't get it quite locked right, snapped right across the finger joints, didn't hurt. That's going to be one of the areas it's going to hurt the worst. You get it on the padding of your hand, it'd be less. It was a surprise because I wasn't expecting it to get snapped by, but I missed the lock. It's easy done. Every trapper has had them snap on them. I just don't understand for the size of these traps that are going to be used that we're regulating here, why we need to sign it. The asking permission is not a big deal to me. It's already in the regulations of Game and Parks. I know if it's in statute some people feel it's more rigid... [LB5]

SENATOR CARLSON: One minute. [LB5]

SENATOR CHRISTENSEN: ...and it would be. But the fact is it's been in their regs for years upon years when this was legal to trap and it's taken care of the situation that we've had. It gives a peace of mind for people if they do want to ask a landowner, they can ask if there's traps along there. I'm opposing this amendment. It is something that's not necessary. I'd like people to vote this down and move on to vote on the bill. Thank

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you. [LB5]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Haar, you're recognized. [LB5]

SENATOR HAAR: Yes, a question for Senator Christensen. [LB5]

SENATOR CARLSON: Senator Christensen, would you yield? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR HAAR: Did you put your hand in the trap that's got the two side springs on it that's made for otters and stuff? [LB5]

SENATOR CHRISTENSEN: I had my foot in that one but not my hand. [LB5]

SENATOR HAAR: Okay. (Laugh) Some senator was out there earlier and asked the guy from Game and Parks to do it and he said, I'd rather not. (Laugh) So I still, you know, my six-year-old granddaughter, I think it'd break fingers, but we don't know that. We can't prove that. You were saying, and I understand what you're saying, if you put up signs people could either steal what's ever in the trap or they could steal the traps themselves. Is that correct? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR HAAR: Yeah. Okay, thank you. And that's a concern certainly. But we've already talked about this whole thing of can we prevent...can we prevent illegal things from happening by laws, and I think the agreement is, no, you can't. And so it would be illegal to steal traps or maybe it isn't. I'd like to ask Senator Christensen another question. [LB5]

SENATOR CARLSON: Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR HAAR: Is it illegal or what kind of penalty is connected with stealing something out of a trap or stealing a trap? Do you know that? [LB5]

SENATOR CHRISTENSEN: Well, I can't tell you what it is. It is illegal because that's personal property to steal that trap... [LB5]

SENATOR HAAR: Okay. [LB5]

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SENATOR CHRISTENSEN: ...or to take what's caught in there. [LB5]

SENATOR HAAR: Okay. Thank you. So, again, you know, you can't pass a law to prevent people from breaking the law. I know that putting up signs could alert people to where the traps are. If there's something already in the trap, I think that's going to be seen from the road no matter what. But I think in this case I would say that I have a higher right, because it's a public right-of-way, to know where those traps are than the person protecting their traps. Mine is a question of safety. The second one, the question of the traps, is one of property. And I think the question of safety is a higher priority. So, once again, I would say I understand the problem this would create, but it would also alert me to where those traps are and allow me to go in the ditches again, into the public right-of-ways to carry out whatever activity, you know, picking flowers, picking up trash, whatever. Thank you very much. [LB5]

SENATOR CARLSON: Thank you, Senator Haar. Senator Christensen, you're recognized. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I got sidetracked here, lost my thought, but I'll go to another one here. The trapper that's out there, said he'd rather not have his hand in it, had his hand in it a number of times. He was setting 80 traps a day trying to catch some otters. Yes, it's a little more severe trap by the double spring which is given, but it's still not something going to mangle you. But, you know, I just hate to see us go down this road. And for the safety, there's where I was going, that you know if you want to walk that ditch, call that landowner. You know, he'll tell you whether there's a trap there or not. It's as easy to go make one phone call, then if you're walking in there, you have a lot of neighbors, they know you're just out for a walk. They don't have to be concerned if it happens to be their traps. Or if they're having somebody else trap, and they can tell you that. If there's none there, they can tell you that. It's really not hard. It's just good neighborly. If you want to go out there, run your dogs and things that way, tell them who's going to be out there. You know, if you're just walking, you're going to be on the road anyway. If you're searching for aluminum cans or something that way, sure, you're going to be in that ditch, but one little phone call is very simple and you got your answer to it. So I really, for them reasons, don't feel like it's necessary that we need to go this direction and ask you to vote against AM238. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Haar, you're recognized. [LB5]

SENATOR HAAR: Mr. President, members of the body, a few years ago I took my grandchildren--a lot of this is my real concern about my grandchildren--I took my grandchildren, we went out to the area to view the cranes and one of the cranes had come...had apparently hit a telephone wire and the dead crane was down in the ditch

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and we went down to touch that crane. Now I have no idea what county I was in. I knew it's a county right-of-way. I have no idea who owned that land. And somehow I get the idea that, although when people come to Lincoln or Omaha or any of the cities in our state, they expect to be safe in public places, and that's all I'm asking for. If, first of all, I have to talk to the landowner and I have to figure out which county I'm in, that's not a very welcome message for people going from the urban areas out into rural Nebraska. And I think just as people coming to Lincoln have the right to be safe in public places, I think people using the right-of-way in rural Nebraska have a right to public...to being safe, not being afraid, to being safe, and my bill, at a minimum, at least informs people where those traps might be. I know it's illegal to steal traps. I know it's illegal to steal animals in those traps. But I think my right to safety trumps the right of these trappers to the safety of their property. Thank you very much. [LB5]

SENATOR CARLSON: Thank you, Senator Haar. Senator Schilz, you are recognized. [LB5]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I guess now that we've sat here for, what is it, two days and some hours discussing this bill, I would just like to say, you know what, it's time for this to stop. It's time for us to move on. This has taken way too much time. I'm going to...I just want to get that opinion out there and, with that, I will stop because I don't want to...I don't want to add to the time that we're discussing this. So please help. Thank you very much. [LB5]

SENATOR CARLSON: Thank you, Senator Schilz. Are there other senators wishing to speak? Seeing none, Senator Haar, you're recognized to close on your amendment. [LB5]

SENATOR HAAR: Okay. Mr. President, members of the body, thank you very much. I think in the end this bill is going to be passed and trapping is going to be restored into county ditches. I would like to feel safe wherever I go in Nebraska. I think that's a right that I have. And this amendment simply puts up signs and allows those who are using the right-of-way, the public right-of-way, to know where there may be traps, concealed traps waiting to trap themselves, their grandchildren, their dogs, whatever. With that, I would close my debate. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Haar. You have heard the closing on the amendment. Question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Are there others wishing to vote? Record, Mr. Clerk. [LB5]

CLERK: 14 ayes, 20 nays, Mr. President, on the amendment. [LB5]

SENATOR CARLSON: The amendment fails. [LB5]

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CLERK: Mr. President, the next amendment I have, Senator Stuthman, AM371. (Legislative Journal page 483.) [LB5]

SENATOR CARLSON: Senator Stuthman, you are recognized to open on your amendment. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. My amendment would make it a responsibility that any county prohibiting trapping by resolution shall enact signs in locations in the county, designated by the county board, providing such notice of prohibition. I just think that in an area, if this bill would pass, that if we allow trapping that the county, if they pass a resolution not allowing trapping, then there should be notification where trapping is not allowed. This notification would give the public the information and the knowledge of where they should not fear traps being placed in county road right-of-ways. I think we owe it to the public. I think the county owes it to the public, the fact that they should be notified where they could walk, where they could take their pets out, and they know that there's not trapping going to be taking place in that road right-of-way. Yes, I will say it's probably a little bit of a burden on the counties to place some signage around or notification that trapping is not allowed in the county or in a portion of the county. I think there are portions of the county where they have housing developments that have started in the last years, like Senator Pankonin says, in the eastern part where there are a lot of developments out in the rural area, and possibly those counties will totally prohibit trapping in that county. But the perception will be, if this bill is passed, that we are allowing trapping in county road right-of-ways again and that will be the headlines: Trapping is allowed in road right-of-ways, except in counties that do not allow trapping or a portion of the county that does not allow trapping. I think we owe it to the public and that the counties owe it to the public to notify those individuals that want to utilize county right-of-ways for other activities, such as cleaning up the road ditches, trimming trees, walking their pets on Saturday afternoon on a nice day in January. I think we owe it to the people that they should be notified that there is no activity taking place in that county road right-of-way. I think the public should be aware of that and I think it is the responsibility of the county then to notify these people that trapping is not allowed in that county road right-of-way. I would like to engage in a little conversation with Senator Christensen, if he would answer a couple questions. [LB5]

SENATOR CARLSON: Senator Christensen, would you yield? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR STUTHMAN: Senator Christensen, in the last time that you were on the mike you was talking about catching bobcats and a few other larger animals in the road right-of-ways. Can you catch a bobcat in those little traps that you have out here in the Rotunda? [LB5]

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SENATOR CHRISTENSEN: No, I wasn't talking about...when I was talking about the pelts and the values, that's not under road right-of-way, but it's....it probably was a poor example. I just grabbed the value. That was a poor example on my part. [LB5]

SENATOR STUTHMAN: Thank you, Senator Christensen, because I just felt that if we were dealing with the county road right-of-way and you were talking about the value of the pelts, I don't think you'll ever catch a bobcat in that little trap that you have out there. I just think that they're going to get out of that, coyotes are going to get out of that trap, and beavers for sure will get out of that trap. I think the issue that I'm really concerned about is the public and the public safety. That is why I have put this amendment on. I want to be able to notify the public that it is safe to have an activity in that road right-of-way. I do realize the fact that it will cost some money for the county, and that's a property tax increase. I am very aware of that. But we don't have to have that if this bill does not go. Take that into consideration. If there's no...if this bill does not pass, if my amendment...I would like to see my amendment pass so that if in the event this bill would pass then we do provide the signage and the information for the public that they can be assured that there should not be any traps in that county road right-of-way. I just think that we owe it to the people. And with that, I will end my comments for right now. Thank you, Mr. President. I'd ask for your support on AM371. Thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Stuthman. Senators wishing to speak are Christensen, Lautenbaugh, and Haar. Senator Christensen, you're recognized. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'll correct, Senator Stuthman, I'll correct my previous statement. In 2006-2007, on road right-of-ways, 64 bobcats were trapped with the traps you see there. That...so that's what was reported. It's on page 2 of the handout of the Fur Harvester Survey 2006-2007. I just wanted to correct that. As far as the amendment here, if this provides safety and the caution that people want here, I'm sure not going to get in your way on it. I'm just looking for moving this bill forward and if this is what we need to do, I'll leave that up to the body. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Lautenbaugh, you're recognized. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and very briefly, once again we're imposing a cost on the county that I think it should be up to them whether or not they want to bear. If they think the signs are necessary, they should put them up. I would suggest that the presence of these signs is probably...would probably be more of a hazard to passing motorists than the traps they warn of. I think we're going the wrong direction here when we're putting more obstructions along the road to warn of a hypothetical danger in the ditch below. I just would urge you to vote against the

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amendment, but I'm not going to belabor the point. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Haar, you're recognized. [LB5]

SENATOR HAAR: Sorry about that. Mr. President, members of the Legislature, I have a question for Senator Stuthman. [LB5]

SENATOR CARLSON: Senator Stuthman, will you yield? [LB5]

SENATOR STUTHMAN: Yes. [LB5]

SENATOR CARLSON: Looking at your amendment, this would require signs where it's prohibited or are we...is this for the benefit of the trappers or for the benefit of the public? I'm not quite...I'm not quite certain from your... [LB5]

SENATOR STUTHMAN: Senator Haar, if this bill moves forward, trapping will be allowed in the road right-of-ways throughout the state of Nebraska, except in a county or a portion of a county that has, by resolution and by Senator Langemeier's correction of that, to not allow trapping. So what I...what my amendment is, that there should be signage where trapping is prohibited. That will notify the public that there should be no traps in that area. Yes, the county has, by resolution or by their method to not allow or exempt out of the trapping, you know, they're not allowing trapping. But there may be a portion of the county where they do want trapping to occur. So I, what I'm intending to do or what my amendment does is makes it...and I shouldn't take up all of your time, but it makes it that wherever trapping is not allowed it needs to have signage. [LB5]

SENATOR HAAR: Okay. So, in other words, for me to feel safe in your county, if your county allows trapping, I should look for these signs. [LB5]

SENATOR STUTHMAN: Senator Haar, if my county allows trapping there will be no signage because trapping is allowed in all county right-of-ways. [LB5]

SENATOR HAAR: Okay. Okay, thank you very much. [LB5]

SENATOR CARLSON: Thank you, Senator Stuthman and Senator Haar. Are there other senators wishing to speak? Seeing none, Senator Stuthman, you're recognized to close on your amendment. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. Yes, I have considered the fact that, you know, signage is going to cost the counties something to post the areas where trapping is not allowed. But in thinking about this, this may be a contributing factor to the decision made by a county board. A county

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board may say, you know, we don't want to have that expense. We don't want to post signs where we're not allowing trapping because if this bill passes, you know, a county...the whole state will allow trapping but counties can opt out and not allow trapping, and it's going to be a cost to it. So counties may say, well, if we got to buy these signs, why don't we just go along and just allow trapping everywhere and not be concerned about public safety. And this could be an issue. This could be an issue for some counties, the responsibility of placing signs, if they decide not to allow trapping in the county. So I've been thinking real hard on this. I hope that, you know, counties would feel responsible that if they do not allow trapping in their county that they would notify the people, and I hoped it would be signage but I think this could be a real factor to the fact that counties may decide, well, you know, if we opt out and allow...and not allow trapping in our county and it's going to cost us signs and we're responsible for that and it's going to cost \$25,000 and we don't have that kind of money, they may say, well, let's just allow trapping; we're not concerned about public safety. That is what I'm concerned about also. So with that, I have been watching how a lot of the votes have been going and I don't think that my amendment will probably succeed and won't be successful. So with that, Mr. President, I'm going to withdraw my amendment. [LB5]

SENATOR CARLSON: Thank you, Senator Stuthman. The amendment is withdrawn. Mr. Clerk. [LB5]

CLERK: Mr. President, Senator Haar would move to amend, AM374. (Legislative Journal page 483.) [LB5]

SENATOR CARLSON: Senator Haar, you are recognized to open on your amendment. [LB5]

SENATOR HAAR: Thank you, Mr. President, members of the board. I'm trying to get a minimum amount of safety here and, since we don't know for sure whether those traps would...that we see in the Rotunda would hurt children or not, my amendment says: Any person trapping wildlife in a country road right-of-way shall not use traps larger than those permitted by the Game and Parks Commission on the effective date of this act. In other words, if those traps are indeed safe, then I would like...this amendment would limit trapping in the county right-of-way to those traps. Thank you very much. [LB5]

SENATOR CARLSON: Thank you, Senator Haar. You've heard the opening on AM374. Those wishing to speak are Senator Nantkes and Stuthman. Senator Nantkes, you're recognized. [LB5]

SENATOR NANTKES: Thank you, Mr. President. Good morning, members. Senator Christensen, will you yield for some questions, please? [LB5]

SENATOR CARLSON: Senator Christensen, will you yield? [LB5]

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SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR NANTKES: Thank you, Senator Christensen. We've had an opportunity to, again, revisit this issue which you've brought before us, and earlier this morning we were talking off the mike and you were soliciting support for a way to move forward on this, which I appreciate. So the bracket motion that we were debating earlier did, in fact, fail to advance and so I was hoping you could provide some clarity to the body about why you've chosen not to invoke cloture and, in fact, move forward on this issue. [LB5]

SENATOR CHRISTENSEN: I would love to move forward with it if...I've been speaking to the Speaker with guidance of when he sees fit and I will check with him again... [LB5]

SENATOR NANTKES: Okay. [LB5]

SENATOR CHRISTENSEN: ...to see if he sees fit there. [LB5]

SENATOR NANTKES: Okay. Well, I would sure encourage you to do so because I think that we've all grown weary in this debate and are ready to move forward. Our constituents are crying out that we direct our efforts, attention, and energy to greater issues and I'm hopeful that you will seriously consider those procedural issues so we can move forward. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Nantkes. Senator Stuthman, you are recognized. [LB5]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. And I want to thank Senator Nantkes for her comments. I have tried on many occasions and have failed. To tell you the truth, I've failed on about all of the attempts that I have made on this bill at the present time. But I do not know that I have given up on this yet. The fact that, you know, a number of us were here when this bill was passed two years ago and, yes, there was an issue of some pets that were caught by illegal traps, but I don't think that issue has been solved at the present time. I think if we allow trapping in the road right-of-ways there's going to be as many illegal traps as there are legal traps. In my opinion, the animals that are going to be trapped in road right-of-ways are going to be badgers, mainly badgers, maybe a few coyotes but I kind of doubt that, some muskrats, and maybe a beaver or two but very few beavers, because I have yet to ever see a beaver dam in a county road right-of-way. We have some that are fairly close to a county road right-of-way, but I don't think that the fact is that they're setting the traps, you know, on the county road right-of-way. People are concerned about traps being stolen in road right-of-ways. A lot of traps are stolen in road right-of-ways. I just feel that the issue that we're dealing with and the main issue that we had when we passed the bill two years ago was the fact of a public right-of-way, the area that could be utilized by

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the public. And if this body is not concerned about safety of the public, then I don't know. But I think we are concerned about the safety of the public, I really do. I really truly believe that everyone here in this body is concerned about the safety of the public, and I respect every one of you for that. And I think this is an issue that we have to deal with. Are we going to go back to where we were before because the Game and Parks, you know, wants to have the control of the county road right-of-ways and allow trapping? Legal trapping is what they will allow, but when you allow an activity, I'm sure there's going to be some illegal activity going on with it with the illegal traps. So with that, I just feel that we need to be very cautious as we move ahead on this bill. Are we going back to where we are not concerned about public safety? Are we opening this up to situations that will continue to surface as far as the trapping, the trapping of animals in the road right-of-ways and public getting caught in these traps, not only individuals but individuals' pets? And we have a lot of people that that pet is a family member. A lot of them feel that that is a family member. So with that, thank you, Mr. President. [LB5]

SENATOR CARLSON: Thank you, Senator Stuthman. Senator Lathrop, you're recognized to speak. [LB5]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm back. You know, Senator Friend had a little comment a while ago; said, colleagues, this is not a filibuster. And he's right, it's not. Senator Haar has thoughtfully put up different ideas. I say thoughtful because they are ideas that relate to the safety issues that he has expressed, and I share, regarding trapping in the ditches. We've had amendments regarding liability. We've had amendments to say put a sign in there and tell people that there's traps in there so no one gets hurt. Now we have Senator Haar's amendment that basically says that we're not going to use the traps that folks are assuming that we're thinking about. In other words, the amendment says you can't put the bigger, more dangerous traps in the ditch and no one is paying attention. This isn't a filibuster. This isn't a drag it out and waste your time. These are thoughtful amendments. At some point, at some point, given the red light to every amendment that comes along, tells you something. Maybe it tells us that folks are tired of listening to this discussion, that they're tired of the whole thing. But every once in awhile a good one comes along and one that makes sense and one that might make a difference and one that might make people that have opposed this bill feel more comfortable. But they're not really being entertained on the floor. They're not being considered. Senator Haar, thanks for this amendment. I intend to support it. I think that one of my significant and serious concerns is that if we allow roadside trapping it's one mere change of a regulation outside of our control and they're putting things in those roadside ditches that can really, truly cause significant injury, and the person that gets hurt will have no recourse. I think the amendment makes sense. It's appropriate and I urge you to support AM374. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Christensen, you are

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recognized to speak. [LB5]

SENATOR CHRISTENSEN: I guess I'm just going to encourage people to vote against this and move on. I'd like to move on with the bill and go forth. And just ask for the vote against this and a vote for the bill. Thank you. [LB5]

SENATOR CARLSON: Thank you, Senator Christensen. Are there others wishing to speak? Seeing none, Senator Haar, you're recognized to close. [LB5]

SENATOR HAAR: Mr. President, members of the body, I have a question for Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

SENATOR HAAR: Senator Christensen, as this bill now stands, we're talking about the two traps that we saw in the Rotunda. Is that... [LB5]

SENATOR CHRISTENSEN: Correct. I'll tell you why... [LB5]

SENATOR HAAR: Okay. [LB5]

SENATOR CHRISTENSEN: ...I said what I did. If you'll change this to say...to allow the commission to set up the rules and regs, fine. [LB5]

SENATOR HAAR: Right. [LB5]

SENATOR CHRISTENSEN: But I have an emergency clause on this right now. If we strike it, I'm fine to leave your language, but otherwise I have no traps. [LB5]

SENATOR HAAR: Okay. [LB5]

SENATOR CHRISTENSEN: I don't even have those out there. [LB5]

SENATOR HAAR: And that was not the intent of this. [LB5]

SENATOR CHRISTENSEN: Well, okay, if that's not the intent, we can either strike the emergency clause and accept this or we can change the wording on this. And then I'm okay. But... [LB5]

SENATOR HAAR: Sure, yeah. [LB5]

SENATOR CHRISTENSEN: ...I looked at this and read it, said... [LB5]

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SENATOR HAAR: Yeah. [LB5]

SENATOR CHRISTENSEN: ...this is a kill to the bill. [LB5]

SENATOR HAAR: Oh, no, no. No, this is to...the point of this amendment would be to say that those traps we've seen and a number of people have put their hands into, although not the bigger one, that those are the only traps that would be allowed in the ditch, and how could we fix this amendment to do that? [LB5]

SENATOR CHRISTENSEN: Well, we can accept this and then I give them an amendment to strike the emergency clause. That works, because then they have the normal time after. The bill wouldn't take effect until after the session and they could have their meetings and make their rules. [LB5]

SENATOR HAAR: That's acceptable and that's fine to me. Yeah. [LB5]

SENATOR CHRISTENSEN: We can do that and I would support this amendment then if we strike the emergency clause, because then it would work to do what you're trying to do and not prohibit them. [LB5]

SENATOR HAAR: Right, right. Yeah, yeah. Yeah, this was not a tricky amendment to try to eliminate them. This is to say the ones that we saw in the Rotunda are the only ones that could be used in the ditch. So having Senator Christensen's backing of this and Senator Lathrop and so on, I feel that this gives a minimum level of comfort to me. I'm still not sure I'm going to feel safe in the ditches of Nebraska. Thank you very much. [LB5]

SENATOR CARLSON: You've heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Senator Haar. [LB5]

SENATOR HAAR: I'd like to call the house, please. [LB5]

SENATOR CARLSON: Okay, the house...a call of the house has been requested. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB5]

CLERK: 33 ayes, 0 nays, Mr. President, on the motion to place the house under call. [LB5]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call.

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Senators Heidemann, Council, and Lautenbaugh, the house is under call. Senator Haar, how would you like to proceed? [LB5]

SENATOR HAAR: Could you tell me my options, Mr. President? Just a roll call... [LB5]

SENATOR CARLSON: You can accept call-in votes. [LB5]

SENATOR HAAR: Yes. Yes, thank you. [LB5]

CLERK: Senator Rogert voting yes. Senator Dubas voting yes. Senator Cornett voting yes. Senator Wightman voting yes. [LB5]

SENATOR CARLSON: Record, Mr. Clerk. [LB5]

CLERK: 25 ayes, 5 nays on the adoption of the amendment. [LB5]

SENATOR CARLSON: The amendment is accepted. Items for the record, Mr. Clerk. [LB5]

CLERK: Mr. President, items for the record: Reference report referring LR26 to the Judiciary Committee; Education Committee reports LB547 to General File with amendments. Amendments to be printed of LB53, Senator Haar; Senator Flood, LB219A. (Legislative Journal pages 484-485.) [LB547 LB53 LB219A]

Priority motion: Senator Louden would move to adjourn until Thursday morning, February 19, at 9:00 a.m.

SENATOR CARLSON: We have a motion to adjourn. All those in favor say aye. Opposed, the same. Motion carries. We are adjourned.